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FEDERAL REGISTER

Vol. 78 Monday,

No. 236 December 9, 2013

Pages 73687–73992

OFFICE OF THE FEDERAL REGISTER

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0979; Directorate Identifier 2013–NM–223–AD; Amendment 39–17697; AD 2013–25–01]

RIN 2120–AA64

Airworthiness Directives; DASSAULT AVIATION Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all DASSAULT AVIATION Model Falcon 10 airplanes. This AD requires a one-time inspection for cracking of the right-hand (RH) and left-hand (LH) inboard flaps, and replacement if necessary. This AD was prompted by reports of cracking found on the inboard end plate (rib) of the RH inboard flap. We are issuing this AD to detect and correct such cracking, which could lead to complete fracture of the rib and loss of integrity of the flap structure, resulting in loss of control of the airplane.

DATES: This AD becomes effective December 24, 2013.

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

We must receive comments on this AD by January 23, 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this 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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0262, dated October 30, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Cracks were found on two Falcon 10 aeroplanes on the inboard end plate (rib) of the Right Hand (RH) inboard flap. On both aeroplanes the crack had initiated in the same area of the rib.
>
> This condition, if not detected and corrected, could lead to complete fracture of the rib and loss of integrity of the flap structure.
>
> To address this potential unsafe condition, Dassault Aviation published Service Bulletin (SB) F10–318, which provides instructions for inspection of the affected area.
>
> For reasons described above, this [EASA] AD requires a one-time [detailed] inspection of the RH and Left Hand (LH) inboard flaps and, depending on findings, replacement of the cracked part.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0979.

Relevant Service Information

Dassault Aviation has issued Mandatory Service Bulletin F10–318, dated October 30, 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 This AD

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because cracking of the inboard end plate (rib) of the inboard flap could lead to complete fracture of the rib and loss of integrity of the flap structure, resulting in loss of control of the airplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0979; Directorate Identifier 2013–NM–223–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 81 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	1 work-hour × $85 per hour = $85	$0	$85	$6,885

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	2 work-hours × $85 per hour = $170	$41,600	$41,770

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–25–01 DASSAULT AVIATION: Amendment 39–17697. Docket No. FAA–2013–0979; Directorate Identifier 2013–NM–223–AD.

(a) Effective Date

This AD becomes effective December 24, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to DASSAULT AVIATION Model Falcon 10 airplanes, certificated in any category, all serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracking found on the inboard end plate (rib) of the right-hand inboard flap. We are issuing this AD to detect and correct such cracking, which could lead to complete fracture of the rib and loss of integrity of the flap structure, resulting in loss of control of the airplane.

(f) Compliance

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

(g) Inspection and Replacement

Within 65 days after the effective date of this AD, do a detailed inspection for cracking of ribs 1 and 3 of the left- and right-hand inboard flaps, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin F10–318, dated October 30, 2013. If any cracking is found, before further flight, replace the inboard flap with a crack-free serviceable flap, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin F10–318, dated October 30, 2013.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(i) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2013–0262, dated October 30, 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–2013–0979.

(j) Material Incorporated by Reference

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

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

(i) Dassault Mandatory Service Bulletin F10–318, dated October 30, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

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

(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 26, 2013.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–29122 Filed 12–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0753; Directorate Identifier 2013–CE–025–AD; Amendment 39–17677; AD 2013–24–03]

RIN 2120–AA64

Airworthiness Directives; Beechcraft Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Beechcraft Corporation (type certificate previously held by Hawker Beechcraft Corporation) Models 1900, 1900C, and 1900D airplanes. This AD was prompted by reports of cracking in the front spar cap angles and hat section structure of the vertical stabilizer. This AD requires inspections of the vertical stabilizer spar angles and hat section for cracks with corrective actions as necessary. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective January 13, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 13, 2014.

ADDRESSES: For service information identified in this AD, contact Beechcraft Corporation at address: 10511 E. Central, Wichita, Kansas 67206; phone: (800) 429–5372 or (316) 676–3140; Internet: *http://www.beechcraft.com/customer_support/contact_us/.* You may view 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 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: Paul Chapman, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4152; fax: (316) 946–4107; email: *paul.chapman@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 27, 2013 (78 FR 52870). The NPRM proposed to require doing visual inspections of the vertical stabilizer spar angles and hat section for cracks and taking corrective actions as necessary.

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.

Further Support for the AD

Scott Lewis suggested that the number of cracks reported may not be accurate. The commenter stated that his fleet had 53 cracks, which is a much higher percentage of airplanes cracked than the 56 cracks reported in the 140 airplanes that Beechcraft reported to the FAA. The commenter proposed no changes to the AD.

We agree that the percentage of cracks reported may be low. This further justifies the need for the AD action and therefore, no changes to the final rule are necessary.

Costs of Compliance Too Low

Scott Lewis stated the costs supplied by Beechcraft are too low and that the actual costs are running $5,983 per side for the spar cap angles plus $9,212 for engineer support for a total of $15,195. This is compared to the $3,150 cited in the NPRM. This does not include the cost of the hat section if it requires repair.

We agree with the commenter. After re-verifying the cost estimate with Beechcraft, they have corrected the costs as follows:

- $6,000 per side for the spar repair kit;
- Around $15,000 for engineering support since these are not standard repairs.

We have changed the AD accordingly.

Continued Flight Before Repair Provided Cracks Do Not Propagate

Scott Lewis stated that he had been issued up to an additional 2,700 flight hours after a crack was found as long as the crack did not propagate. Although no request to change the NPRM was made, the FAA infers that the commenter wants to add the provision of flight with known cracks provided any known crack does not propagate.

The FAA does not agree. The FAA's Small Airplane Directorate does not allow further flight with known cracks in critical structure without additional substantiating data. Advisory Circular (AC) 23–13A, Chapter 6, dated September 29, 2005, describes what additional data is required to allow flight with known cracks (found on the Internet at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf).*

We are making no changes to the AD based on this comment.

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 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 52870, August 27, 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 52870, August 27, 2013).

Costs of Compliance

We estimate that this AD affects 400 airplanes.

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
Visual inspection of the vertical stabilizer spar angles and hat section.	1.5 work-hours × $85 per hour = $127.50 ..	Not applicable	$127.50	$51,000

We estimate the following costs to do any necessary repairs that are required based on the results of the inspection. We have no way of determining the number of airplanes that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair of the spar cap (right hand or left hand).	30 work-hours × $85 per hour = $2,550.	$6,000 per side plus $15,000 per engineering support.	As much as $29,550 if both sides needed repair.

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):

2013–24–03 Beechcraft Corporation (type certificate previously held by Hawker Beechcraft Corporation): Amendment 39–17677; Docket No. FAA–2013–0753; Directorate Identifier 2013–CE–025–AD.

(a) Effective Date

This AD is effective January 13, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Beechcraft Corporation airplanes in table 1 of this AD, certificated in any category:

TABLE 1 TO PARAGRAPH (c) OF THIS AD—*Applicability*

Model	Serial Numbers
1900	UA–3.
1900C	UB–1 through UB–74, UC–1 through UC–174.
1900C (C–12J)	UD–1 through UD–6.
1900D	UE–1 through UE–439.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by reports of cracking in the front spar cap angles and hat section of the vertical stabilizer structure. We are issuing this AD to detect and correct cracking in the vertical stabilizer structure, which could lead to structural failure of the vertical stabilizer and result in loss of control.

(f) Compliance

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

(g) Visual Inspections

(1) *For all airplanes:* Within the next 600 hours time-in-service (TIS) after January 13, 2014 (the effective date of this AD), inspect part number (P/N) 101–640011–3/–4 spar angles and P/N 114–640000–25/–26 hat section for cracks following the Accomplishment Instructions in paragraph 3.A. of Hawker Beechcraft Mandatory Service Bulletin SB 55–4114, dated August 2012.

(2) *For Models 1900 and 1900C airplanes:* Within 1,200 hours TIS after the initial inspection required in paragraph (g)(1) of this AD or within 2 years after the initial inspection required in paragraph (g)(1) of this AD, whichever occurs first, and repetitively thereafter at intervals not to exceed 1,200 hours TIS or 2 years, whichever occurs first, inspect P/N 101–640011–3 and P/N 101–640011–4 spar cap angles for cracks. Follow Procedure 8 under Vertical Stabilizer in the ''I'' Check Procedures of Hawker Beechcraft Corporation Model 1900/1900C Airliner Structural Inspection Manual, Part Number 98–30937G2, dated May 1, 2013.

(3) *For Models 1900 and 1900C airplanes:* Within 1,200 hours TIS after the initial inspection required in paragraph (g)(1) of this AD or within 2 years after the initial inspection required in paragraph (g)(1) of this AD, whichever occurs first, and repetitively thereafter at intervals not to exceed 1,200 hours TIS or 2 years, whichever occurs first, inspect P/N 114–640000–25 and P/N 114–640000–26 hat section for cracks. Follow Procedure 9 under Vertical Stabilizer in the ''I'' Check Procedures of Hawker Beechcraft Corporation Model 1900/1900C Airliner Structural Inspection Manual, Part Number 98–30937G2, dated May 1, 2013.

(4) *For Model 1900D airplanes:* Within 1,200 hours TIS after the initial inspection required in paragraph (g)(1) of this AD or within 2 years after the initial inspection required in paragraph (g)(1) of this AD, whichever occurs first, and repetitively thereafter at intervals not to exceed 1,200 hours TIS or 2 years, whichever occurs first, inspect P/N 101–640011–3 and P/N 101–640011–4 spar cap angles for cracks. Follow Procedure 6.b. under Vertical Stabilizer Canted Stabilizer Station (CSS 69.184 through VSS 91.10) in the ''I'' Check Procedures of Beechcraft Corporation Model 1900D Airliner Structural Inspection Manual, Part Number 129–590000–65E5, dated May 1, 2013.

(5) *For Model 1900D airplanes:* Within 1,200 hours TIS after the initial inspection required in paragraph (g)(1) of this AD or within 2 years after the initial inspection required in paragraph (g)(1) of this AD, whichever occurs first, and repetitively thereafter at intervals not to exceed 1,200 hours TIS or 2 years, whichever occurs first, inspect P/N 114–640000–25 and P/N 114–640000–26 hat section for cracks. Follow Procedure 6.c. under Vertical Stabilizer Canted Stabilizer Station (CSS 69.184 through VSS 91.10) in the ''I'' Check Procedures of Beechcraft Corporation Model 1900D Airliner Structural Inspection Manual, Part Number 129–590000–65E5, dated May 1, 2013.

(h) Repair

If any cracks are found during any of the inspections required in paragraph (g) of this AD, to include all subparagraphs, before further flight, you must contact Beechcraft Corporation to obtain repair instructions approved by the Wichita Aircraft Certification Office (ACO) specifically for compliance with this AD and incorporate those instructions. You can find contact information for Beechcraft Corporation in paragraph (l)(3) of this AD.

(i) Special Flight Permit

If cracks are found during any of the inspections required in paragraph (g) of this AD, to include all subparagraphs, the FAA may allow a one-time special flight permit to a repair facility depending on the cracking found. You must contact Beechcraft Corporation and provide them with crack detail information for them to determine residual strength of the airplane before applying to the FAA for a special flight permit. You can find contact information for Beechcraft Corporation in paragraph (l)(3) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita 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.

(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.

(k) Related Information

For more information about this AD, contact Paul Chapman, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4152; fax: (316) 946–4107; email: *paul.chapman@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 this AD specifies otherwise.

(i) Hawker Beechcraft Mandatory Service Bulletin SB 55–4114, dated August 2012.

(ii) Hawker Beechcraft Corporation Model 1900/1900C Airliner Structural Inspection Manual, Part Number 98–30937G2, dated May 1, 2013.

(iii) Beechcraft Corporation Model 1900D Airliner Structural Inspection Manual, Part Number 129–590000–65E5, dated May 1, 2013.

(3) For Beechcraft Corporation service information identified in this AD, contact Beechcraft Corporation at address: 10511 E. Central, Wichita, Kansas 67206; phone: (800) 429–5372 or (316) 676–3140; Internet: *http://www.beechcraft.com/customer_support/contact_us/.*

(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 Kanas City, Missouri, on November 15, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–29060 Filed 12–6–13; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1215, 1217 and 1219

Revisions to Safety Standards for Infant Bath Seats, Toddler Beds, and Full-Size Baby Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In accordance with section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), also known as the Danny Keysar Child Product Safety Notification Act, the U.S. Consumer Product Safety Commission (Commission or CPSC) has published consumer product safety standards for numerous durable infant or toddler products, including infant bath seats, toddler beds, and full-size baby cribs. These standards incorporated by reference the ASTM voluntary standards associated with the products, with some modifications. In August 2011, Congress enacted Public Law 112–28, which sets forth a process for updating standards that the Commission has issued under the authority of section 104(b) of the CPSIA. In accordance with that process, the CPSC is publishing this direct final rule, revising the CPSC's standards for infant bath seats, toddler beds, and full-size cribs, to incorporate by reference more recent versions of the applicable ASTM standards.

DATES: The rule is effective on March 24, 2014, unless we receive significant adverse comment by January 8, 2014. If we receive timely significant adverse comments, we will publish notification in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publications listed in this rule is approved by the Director of the Federal Register as of March 24, 2014.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2013–0043, by any of the following methods:

Submit electronic comments via:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. The Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov.*

Submit written submissions by:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

FOR FURTHER INFORMATION CONTACT: For information related to the infant bath seat standard, contact: Keysha Walker, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814–4408; telephone: (301) 504–6820; email: *kwalker@cpsc.gov.* For information related to the toddler bed standard, contact Daniel Dunlap, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814–4408; telephone: (301) 504–7733; email: *ddunlap@cpsc.gov.* For information related to the full-size crib standard, contact Justin Jirgl, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814–4408; telephone: (301) 504–7814; email: *jjirgl@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Danny Keysar Child Product Safety Notification Act. The Consumer Product Safety Improvement Act of 2008 (CPSIA, Pub. L. 110–314) was enacted on August 14, 2008. Section 104(b) of the CPSIA, also known as the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires that these standards are to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. Under the statute, the term ''durable infant or toddler product'' explicitly includes infant bath seats, toddler beds, and full-size cribs. In accordance with section 104(b), the Commission has published safety standards for these products that incorporate by reference the relevant ASTM standards, with certain modifications that make the voluntary standard more stringent.

Public Law 112–28. On August 12, 2011, Congress enacted Public Law 112–28, amending and revising several provisions of the CPSIA, including the Danny Keysar Child Product Safety Notification Act. The revised provision sets forth a process for updating CPSC's durable infant or toddler standards when a voluntary standard group changes a voluntary standard upon which the CPSC standard was based. This provision states:

> If an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. The revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the **Federal Register**) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.

Public Law 112–28, section 3.

Notification and Review of ASTM Revisions. On September 25, 2013, ASTM notified CPSC of ASTM's approval and publication of revisions to ASTM F1967, Standard Consumer Specification for Infant Bath Seats; ASTM F1821, Standard Consumer Safety Specification for Toddler Beds; and ASTM F1169, Standard Consumer Safety Specification for Full-Size Baby Cribs. In the notification, ASTM stated that ASTM has revised these standards since the Commission adopted the earlier versions of the standards as CPSC mandatory standards.

The Commission has reviewed the revisions. Under Public Law 112–28, the revised standards shall be considered consumer product safety rules, unless the Commission determines and notifies ASTM that these revisions do not improve the safety of these consumer products and that the Commission is retaining the existing standard. The Commission has declined to make such a determination and notification to ASTM with respect to these revisions. Accordingly, we are publishing this direct final rule, which revises the incorporation by reference included in each of these rules so that the Code of Federal Regulations will accurately reflect the revised version of the relevant ASTM standards.

B. Revisions to the Particular ASTM Standards

1. Infant Bath Seats

Background. On June 4, 2010, the Commission published a final rule for infant bath seats that incorporated by reference ASTM F1967–08a, Standard Consumer Specification for Infant Bath Seats, with certain modifications to make the standard more stringent. (75 FR 31691). On May 16, 2012, ASTM notified the CPSC that ASTM had approved and published a revised version of the bath seat standard, ASTM F1967–11a. In accordance with Public Law 112–28, the revised standard was considered a consumer product safety standard issued by the Commission in the absence of a notification to ASTM of a Commission determination that the proposed revision did not improve safety. The Commission published a final rule incorporating by reference the revised bath seat standard, ASTM F1967–11a, as the Commission's standard for infant bath seats. 77 FR 4542 (July 31, 2012).

Subsequently, ASTM notified us on September 25, 2013, that ASTM has revised ASTM's infant bath seat standard again; the current ASTM standard is ASTM F1967–13.

There are several differences between ASTM F1967–11a, the version that CPSC currently mandates as the safety standard for bath seats, and the revised voluntary standard, ASTM F1967–13. In this section of the preamble, we summarize those differences.

Attachment Components. The 2013 version of the ASTM standard contains a new definition and requirement for attachment components. The requirement specifies that all components needed to attach the bath seat to the bath tub (attachment components) must be permanently attached to the bath seat. Staff is aware of a bath seat design that provides some attachment components that are separate from the bath seat. With this design, consumers must install the attachment components, consisting of adhesive discs, on to the bath tub surface. If the consumer fails to install the adhesive discs or fails to install them properly, these bath seats pose a tip over hazard. We believe requiring all attachment components to be permanently attached to the bath seats will increase the safety of bath seats.

Test Surface Preparation. ASTM F1967–11a specifies that bath seats be tested for stability on two specific test surfaces and also provides specific directions for preparing the test surfaces. Staff is aware of third party testing laboratories that interpreted one step in the testing preparation directions differently than ASTM intended. Following this alternate interpretation, the testing laboratory provided passing test results for some bath seats that otherwise would not have passed the stability requirement. Therefore, ASTM changed this section of the standard to specify more clearly test surface preparation. We believe this change will improve the safety of bath seats because the revised provision would prevent bath seats that should, in ASTM's view, be deemed non-complying from passing the requirement in the future.

Definition of a Bath Seat/Restraints Systems. In 2011, ASTM changed the definition of a ''bath seat'' to specify better the type of support that a bath seat provides. Before the ASTM F1967–11a version, the definition of ''bath seat'' did not specify the type of support the product provided. The revised (and current) definition states that a bath seat provides, at a minimum, support to the front and back of a seated infant. Thus, a product with only back support is no longer considered a bath seat. ASTM F1967–13 removes a provision that applied to bath seats with only back support because the provision is no longer relevant, given the current definition of ''bath seat'' as a product with front and back support. This change thus removes an obsolete provision.

Suction Cup Requirements. ASTM clarified two requirements for testing bath seats that use suction cups. The standard provides two suction cup test requirements: One provision evaluates the attachment between the suction cups and the test surface; the other evaluates the attachment of the suction cups to the bath seat itself. The first difference between the two versions clarifies the test requirement to emphasize that the bath seat must actually attach to the test surfaces as part of the test. The second difference specifies that this particular test only needs to be performed on one of the two test surfaces. Both revisions are clarifications.

Markings and Labeling. ASTM made two minor changes to labeling requirements. One revision changed the test for label permanency to the relative humidity (RH) to be a range rather than a specific RH. Staff considers this a practical change that is needed because producing an exact RH for the test is difficult. The second change to the labeling requirements removes the word ''adult'' before the term ''caregiver'' in a provision that requires a warning to ''be located on the product so that it is visible to the [adult] caregiver.''

Assessment. Except for the revisions for attachment components and test surface preparation, the revisions discussed above do not make any substantial change to the standard. Staff's opinion is that the new requirement for attachment components and the change to the test surface preparation provision will improve the safety of the bath seats. As a result, the Commission did not determine or notify ASTM that the revised standard does not improve the safety of infant seats.

In accordance with Public Law 112–28, the revised ASTM standard for infant bath seats therefore becomes the new CPSC standard 180 days after the date the CPSC received notification of the revision from ASTM. This rule revises the incorporation by reference at 16 CFR part 1215, to reference the revised ASTM standard, ASTM F1967–13.

2. Toddler Beds

Background. On April 20, 2011, the Commission published a final rule for toddler beds that incorporated by reference ASTM F1821–09, Standard Consumer Safety Specification for Toddler Beds, with several modifications to make the standard more stringent. 76 FR 22019 (correction notice, 76 FR 27882 (May 13, 2011)). On May 16, 2012, ASTM notified the Commission that ASTM had revised ASTM's toddler bed standard and published ASTM F1821–11b. The CPSC reviewed the revised standard and concluded that the revision, ASTM F1821–11b, did not improve the safety of toddler beds. The revised standard contained several provisions for guardrail height and guardrail strength that were less stringent than the CPSC's existing standard in 16 CFR part 1217. The Commission retained ASTM F1821–09 as the standard incorporated by reference into the CPSC's mandatory standard at 16 CFR part 1217. The staff briefing package discussing staff's review of ASTM F1821–11b is posted on the Commission's Web site at: *http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2012/ASTMRevisioinstoSafetyStandardsforDurableInfantToddlerProducts.pdf.*

Revised Standard. On September 25, 2013, ASTM notified the Commission that ASTM has revised ASTM F1821 again and has published a new version, ASTM F1821–13. This version contains 12 significant changes from ASTM F1821–09. These changes bring the ASTM standard into accord with the CPSC's mandatory standard for toddler beds at 16 CFR part 1217.

Assessment. Staff has concluded that the revised standard, ASTM F1821–13, is neutral with respect to safety as compared to the prior standard. Staff recommends that the Commission allow the ASTM revisions to the toddler bed standard to become the CPSC-mandated standards.

Nothing in Section 104 obligates the Commission to make a determination that safety is not improved or to notify the applicable standards organization accordingly. As a result, where a proposed revision to the voluntary standard does not impact safety, the Commission has the discretion to make no determination, which would result in the revised voluntary standard becoming the applicable consumer product safety standard. In the toddler bed situation, because the revised standard is neutral with respect to safety, a determination by the Commission under the statute is not warranted and the revised voluntary standard will therefore become effective as a consumer product safety standard pursuant to the statute. The revisions bring ASTM F1821 into accord with the CPSC's regulation in 16 CFR part 1217.

In accordance with Public Law 112–28, the revised ASTM standard for toddler beds becomes the new CPSC standard on March 24, 2014, which is 180 days after the date we received notification of the revision from ASTM. The rule the Commission issues today revises the incorporation by reference at 16 CFR part 1217 to reference the revised ASTM standard, ASTM F1821–13.

3. Full-Size Cribs

Background. On December 28, 2010, the Commission published a final rule for full-size cribs that incorporated by reference ASTM F1169–10, *Standard Consumer Safety Specification for Full-Size Baby Cribs,* along with two modifications. On May 16, 2012, ASTM notified the CPSC that ASTM had published a revised 2011 version of ASTM's standard, ASTM F1169–11. The CPSC reviewed the revised standard and determined that the revision, ASTM F1169–11, was essentially identical to the full-size crib standard that the Commission mandated at 16 CFR part 1219. Staff's briefing package is available at *http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2012/ASTMRevisioinstoSafetyStandardsforDurableInfantToddlerProducts.pdf.* In accordance with Pub. L. 112–28, the Commission published a final rule that incorporated by reference the revised full-size crib standard, ASTM F1169–11, as the Commission's standard for full-size cribs. 77 FR 4542 (July 31, 2012). As noted above, ASTM notified us on September 25, 2013, that ASTM again has revised ASTM's full-size crib standard; the current ASTM standard is ASTM F1169–13.

Revised Standard. The revised standard, ASTM F1169–13, differs from ASTM F1169–11 (the current CPSC standard) in one aspect that is reflected in two sections of the revised standard. ASTM F1169–11 requires that before and after testing a crib, the crib must comply with all general requirements of the standard. These general requirements address the distance between slats. However, the specific testing procedure for slats allows for one slat to fail during testing if the load at failure is at least 60 pounds and an additional 25 percent of the slats are tested and meet the 80-pound force requirement. Thus, a tested crib potentially could comply with the specific testing procedures for slats even if a slat failed during testing, but not meet the general slat spacing requirements because of the failed slat. In that situation, the crib would not comply with the requirements in the current standard because the crib would not meet all of the general requirements after the crib had been tested.

The revised standard, ASTM F1169–13, provides an exception for this specific situation so that a crib's failure to meet the slat spacing requirement under the testing circumstances described above would not cause the crib to be considered noncompliant.

Assessment. The revision clarifies the intent of the ASTM standard and removes an unintended inconsistency. The revision does not change the substantive requirements of the standard.

As previously noted, the Commission is not obligated to make a determination that safety is not improved or to notify the applicable standards organization accordingly. As a result, where a proposed revision to the voluntary standard does not impact safety, the Commission has the discretion to make no determination, which would result in the revised voluntary standard becoming the applicable consumer product safety standard. In the crib situation, because the revised standard is neutral with respect to safety, a determination by the Commission under the statute is not warranted. The revised voluntary standard will therefore become effective as a consumer product safety standard pursuant to the statute.

In accordance with Public Law 112–28, the revised ASTM standard for full-size cribs becomes the new CPSC standard on March 24, 2014, which is 180 days after the date the CPSC received notification of the revision from ASTM. This rule revises the incorporation by reference at 16 CFR part 1219, to reference the revised ASTM standard, ASTM F1169–13.

C. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA) generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds that notice and public procedure are ''impracticable, unnecessary, or contrary to the public interest.'' The Commission concludes that in the context of these revisions to ASTM standards upon which CPSC's durable infant or toddler product standards are based, which automatically become consumer product standards and which simply would be incorporated by reference into applicable regulatory provisions, notice and comment is not necessary.

Without Commission action to update the incorporation by reference in the CPSC's mandated standards, the standard published in the Code of Federal Regulations will not reflect the revised ASTM standard that will be in effect by operation of law under Public Law 112–28. For accuracy and to avoid misleading the public as to the applicable consumer product standard, the Commission believes that issuing a rule revising the incorporation by reference in these circumstances is appropriate. In Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgation of rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (August 18, 1995). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule because we do not expect any significant adverse comments.

Revising the regulatory references to the ASTM standards will conform the regulation to the substantive change in the applicable consumer product standard that will occur by operation of law under Public Law 112–28. Public comment will not impact the substantive changes to the standards or the effect of the revised standards as consumer product safety standards under Public Law 112–28. Therefore, there is little for the public to comment upon.

Unless we receive a significant adverse comment within 30 days, the

rule will become effective on March 24, 2014. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be one where the commenter explains why the rule would be inappropriate, including an assertion challenging the rule's underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change.

Should the Commission receive a significant adverse comment, the Commission would withdraw this direct final rule. Depending on the comments and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

D. Effective Date

Under the procedure set forth in Public Law 112–28, when a voluntary standard organization revises a standard upon which a consumer product safety standard issued under the Danny Keysar Child Product Safety Notification Act was based, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the **Federal Register**. In accordance with this provision, this rule establishes an effective date that is 180 days after we received notification from ASTM of revisions to these standards. As discussed in the preceding section, this is a direct final rule. Unless the Commission receives a significant adverse comment within 30 days, the rule will become effective on March 24, 2014.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies review proposed and final rules for the rules' potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. The changes to the incorporation by reference in the infant bath seat, toddler bed, and full-size crib standards reflect changes made by operation of law under Public Law 112–28. Therefore, the rule will not have any economic impact on small entities.

F. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

G. Paperwork Reduction Act

The infant bath seat, toddler bed, and full-size crib standards contain information-collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). No changes have been made to those sections of the standards. Thus, these revisions will not have any effect on the information-collection requirements related to those standards.

H. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a ''consumer product safety standard under [the Consumer Product Safety Act (CPSA)]'' is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.

The Danny Keysar Child Product Safety Notification Act (at section 104(b)(1)(B) of the CPSIA) refers to the rules to be issued under that section as ''consumer product safety standards,'' thus, implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

I. Certification

Section 14(a) of the CPSA imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body (test laboratory) accredited by the Commission to test according to the applicable requirements. As noted in the preceding discussion, standards issued under section 104(b)(1)(B) of the CPSIA are ''consumer product safety standards.'' Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because infant bath seats, toddler beds, and full-size cribs are children's products, samples of these products must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements of section 101 of the CPSIA, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in the Danny Keysar Child Product Safety Notification Act.

J. Notice of Requirements

In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission has previously published NORs for accreditation of third party conformity assessment bodies for testing infant bath seats (75 FR 31688 (June 4, 2010)); toddler beds (76 FR 22030 (April 20, 2011)); and full-size cribs (75 FR 81789 (December 28, 2010)). The NORs provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing infant bath seats to 16 CFR part 1215; for testing toddler beds to 16 CFR part 1217; and for testing full-size cribs to 16 CFR part 1219. These NORs are listed in the Commission's rule, ''Requirements Pertaining to Third Party Conformity Assessment Bodies.'' 16 CFR part 1112.

The revisions discussed above do not add any new provisions that would require a third party conformity assessment body (testing laboratory) to conduct additional tests. As discussed above, the infant bath seat revision adds a requirement that attachment components must be permanently attached to the bath seat. Although this is a new requirement, the revision does not involve a new test, only a brief evaluation. The revisions to the toddler bed standard bring the ASTM standard into accord with the CPSC standard. Thus, the revised toddler bed standard will not change existing test methods. The revision to the full-size crib standard is a clarification and will not change the existing test methods in that standard.

Revising the references for the infant bath seat, toddler bed, and full-size crib standards will not necessitate any change in the way that third party conformity assessment bodies test these products for compliance to CPSC standards. Therefore, the Commission

considers the existing accreditations that the Commission has accepted for testing to these standards also to cover testing to the revised standards. The existing NORs for these standards remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories' accreditation to reflect the revised standards in the normal course of renewing their accreditation.

List of Subjects in 16 CFR Parts 1215, 1217, and 1219

Consumer protection, Incorporation by reference, Imports, Infants and children, Law enforcement, Safety, Toys.

For the reasons stated above, the Commission amends 16 CFR chapter II as follows:

PART 1215—SAFETY STANDARD FOR INFANT BATH SEATS

■ 1. The authority citation for part 1215 is revised to read as follows:

Authority: Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008); Sec. 3, Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

■ 2. Revise § 1215.2 to read as follows:

§ 1215.2 Requirements for infant bath seats.

Each infant bath seat shall comply with all applicable provisions of ASTM F1967–13, Standard Consumer Safety Specification for Infant Bath Seats, approved on August 1, 2013. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these ASTM standards from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA, telephone: 610–832–9585; *http://www.astm.org/.* You may inspect copies at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or 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/code_of_federal regulations/ibr_locations.html.*

PART 1217—SAFETY STANDARD FOR TODDLER BEDS

■ 3. The authority citation for part 1217 is revised to read as follows:

Authority: Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008); Sec. 3, Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

■ 4. Revise § 1217.2 to read as follows:

§ 1217.2 Requirements for toddler beds.

Each toddler bed shall comply with all applicable provisions of ASTM F1821–13, Standard Consumer Safety Specification for Toddler Beds, approved on June 1, 2013. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; telephone 610–832–9585; *www.astm.org.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or 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/code_of_federal_regulations/ibr_locations.html.*

PART 1219—SAFETY STANDARD FOR FULL-SIZE BABY CRIBS

■ 5. The authority citation for part 1215 is revised to read as follows:

Authority: Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008); Sec. 3, Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

■ 6. Revise § 1219.2 to read as follows:

§ 1219.2 Requirements for full-size baby cribs.

Each full-size baby crib shall comply with all applicable provisions of ASTM F1169–13, Standard Consumer Safety Specification for Full-Size Baby Cribs, approved May 1, 2013. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; telephone 610–832–9585; *www.astm.org.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or 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/code_of_federal_regulations/ibr_locations.html.*

Dated: December 3, 2013.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2013–29226 Filed 12–6–13; 8:45 am]

BILLING CODE 6355–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2013–0040]

RIN 0960–AH62

Extension of Expiration Date for Mental Disorders Body System Listings; Correction

AGENCY: Social Security Administration.

ACTION: Final rule; correction.

SUMMARY: In the **Federal Register** of December 3, 2013, we published a final rule document extending the expiration date of the Mental Disorders body system in the Listing of Impairments (listings) in our regulations. We inadvertently stated the RIN incorrectly as 0960–AH49. This document corrects the RIN to 0960–AH62.

DATES: Effective on December 9, 2013.

FOR FURTHER INFORMATION CONTACT: William P. Gibson, Office of Regulations and Reports Clearance, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–9039. 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: We published a final rule document in the **Federal Register** of December 3, 2013, (78 FR 72571) extending the expiration date of the Mental Disorders body system in the Listing of Impairments (listings) in our regulations. In this final rule, we incorrectly stated the RIN as 0960–AH49. This correction changes the RIN to 0960–AH62.

In FR Doc. 2013–28836 appearing on page 72571 in the **Federal Register** of Tuesday, December 3, 2013, the following correction is made:

On page 72571, in the second column, the RIN is corrected to read ''0960–AH62''.

Paul Kryglik,

Director, Office of Regulations and Reports Clearance.

[FR Doc. 2013–29264 Filed 12–6–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 522, 524, and 529

[Docket No. FDA–2013–N–0002]

New Animal Drugs; Hyaluronate Sodium; Hydrogen Peroxide; Imidacloprid and Moxidectin; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during October 2013. FDA is also informing the public of the availability of summaries of the basis of approval and of environmental review documents, where applicable. The animal drug regulations are also being amended to reflect a change of sponsorship of an ANADA.

DATES: This rule is effective December 9, 2013.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, *george.haibel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations to reflect approval actions for NADAs and ANADAs during October 2013, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain these documents at the CVM FOIA Electronic Reading Room: *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofFoods/CVM/CVMFOIAElectronicReadingRoom/default.htm*.

In addition, Eka Chemicals, Inc., 1850 Parkway Pl. SE., suite 1200, Marietta, GA 30067 has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 141–255 for PEROX–AID (hydrogen peroxide) 35% Solution to Western Chemical, Inc., 1269 Lattimore Rd., Ferndale, WA 98248. Following this change of sponsorship, Eka Chemicals, Inc., is no longer a sponsor of an approved NADA. Accordingly, the Agency is amending the regulations to reflect this change of sponsorship and change of sponsor status.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING OCTOBER 2013

NADA/ANADA	Sponsor	New animal drug product name	Action	21 CFR section	FOIA summary	NEPA review
200–432	Bioniche Animal Health USA, Inc., 119 Rowe Rd., Athens, GA 30601.	NEXHA (hyaluronate sodium) Injectable Solution.	Original approval as a generic copy of NADA 140–883.	522.1145	yes	CE.[1 2]
141–251	Bayer HealthCare LLC, Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201.	ADVANTAGE MULTI for Dogs (imidacloprid and moxidectin) Topical Solution.	Supplemental approval for the treatment of *Dirofilaria immitis* circulating microfilariae in heartworm-positive dogs and the treatment and control of sarcoptic mange caused by *Sarcoptes scabiei* var. *canis*.	524.1146	yes	CE.[1 3]
141–254	Bayer HealthCare LLC, Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201.	ADVANTAGE MULTI for Cats (imidacloprid and moxidectin) Topical Solution.	Supplemental approval for the prevention of heartworm disease caused by *Dirofilaria immitis;* kills adult fleas (*Ctenocephalides felis*) and is indicated for the treatment of flea infestations on ferrets.	524.1146	yes	CE.[1 3]

[1] The Agency has determined under 21 CFR 25.33 that this action is categorically excluded (CE) from the requirement to submit an environmental assessment or an environmental impact statement because it is of a type that does not individually or cumulatively have a significant effect on the human environment.
[2] CE granted under 21 CFR 25.33(a)(1).
[3] CE granted under 21 CFR 25.33(d)(1).

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 522, 524, and 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to

the Center for Veterinary Medicine, 21 CFR parts 510, 522, 524, and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entry for ''Eka Chemicals, Inc.''; and in the table in paragraph (c)(2), remove the entry for ''061088''.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 4. In § 522.1145, revise paragraph (e)(2) and the heading of paragraph (e)(3) to read as follows:

§ 522.1145 Hyaluronate sodium.

* * * * *

(e) * * *

(2) *Sponsors.* See sponsors in § 510.600(c) of this chapter:

(i) No. 000859 for use of products described in paragraph (e)(1) as in paragraph (e)(3) of this section.

(ii) No. 064847 for use of product described in paragraph (e)(1)(i) as in paragraph (e)(3) of this section.

(3) *Conditions of use*—

* * * * *

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 5. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 6. In § 524.1146, revise paragraphs (a)(2) and (d)(1)(ii); and add paragraph (d)(3) to read as follows:

§ 524.1146 Imidacloprid and moxidectin.

(a) * * *

(2) Each milliliter of solution contains 100 mg imidacloprid and 10 mg moxidectin for use as in paragraphs (d)(2) and (d)(3) of this section.

* * * * *

(d) * * *

(1) * * *

(ii) *Indications for use*—(A) For the prevention of heartworm disease caused by *Dirofilaria immitis*; and the treatment and control of intestinal roundworms (*Toxocara canis* and *Toxascaris leonina*), hookworms (*Ancylostoma caninum* and *Uncinaria stenocephala*), and whipworms (*Trichuris vulpis*); kills adult fleas and treats flea infestations (*Ctenocephalides felis*).

(B) For treatment of *Dirofilaria immitis* circulating microfilariae in heartworm-positive dogs and the treatment and control of sarcoptic mange caused by *Sarcoptes scabiei* var. *canis*.

* * * * *

(3) *Ferrets*—(i) *Amount.* Topically apply 9.0 mg/lb body weight (20 mg/kg) imidacloprid and 0.9 mg/lb (2 mg/kg) moxidectin, once a month.

(ii) *Indications for use.* For the prevention of heartworm disease caused by *Dirofilaria immitis*; kills adult fleas (*Ctenocephalides felis*) and is indicated for the treatment of flea infestations on ferrets.

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 7. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 529.1150 [Amended]

■ 8. In paragraph (b) of § 529.1150, remove ''061088'' and in its place add ''050378''.

Dated: December 2, 2013.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2013–29234 Filed 12–6–13; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2006–0605; FRL–9903–84–OAR]

RIN 2060–AR99

Prevention of Significant Deterioration for Particulate Matter Less Than 2.5 Micrometers—Significant Impact Levels and Significant Monitoring Concentration: Removal of Vacated Elements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On January 22, 2013, the United States Court of Appeals for the District of Columbia Circuit (the Court) granted a request from the EPA to vacate and remand to the EPA portions of two Prevention of Significant Deterioration (PSD) regulations, promulgated in 2010 under the authority of the Clean Air Act (CAA), regarding the Significant Impact Levels (SILs) for particulate matter less than 2.5 micrometers ($PM_{2.5}$). The Court further vacated the portions of the PSD regulations establishing a $PM_{2.5}$ Significant Monitoring Concentration (SMC). The EPA is amending its regulations to remove the vacated $PM_{2.5}$ SILs and SMC provisions from the PSD regulations in the Code of Federal Regulations (CFR). This action is exempt from notice-and-comment rulemaking because it is ministerial in nature. The EPA will initiate a separate rulemaking in the future regarding the $PM_{2.5}$ SILs that will address the Court's remand.

DATES: This final rule is effective December 9, 2013.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0605. All documents in the docket are listed on the *www.regulations.gov* Web site. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center (Air Docket), EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Garwood, Office of Air Quality Planning and Standards (C504–03), U.S. EPA, Research Triangle Park, North Carolina 27709, telephone number (919) 541–1358, facsimile number (919) 541–5509, email: *garwood.ben@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this regulation apply to me?

The entities potentially affected by this rule include new and modified major stationary sources in all industry groups. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in 40 CFR 51.166 and 52.21. Entities potentially affected by this final action also include state, local and tribal governments that issue PSD permits.

II. Background and Rationale for This Final Action

The PSD permit program applies to any new major stationary source or major modification at a stationary source located in a designated attainment or unclassifiable area for any regulated NSR pollutant.[1] The PSD

[1] The PSD program stems from part C of title I of the CAA.

regulations require, among other things, compliance with emission limitations achievable through installation of best achievable control technology (BACT); an air quality analysis to show that the newly constructed source or modification will not cause or contribute to a violation of any National Ambient Air Quality Standard (NAAQS) or applicable PSD increment,[2] including analysis of air quality monitoring data; an assessment of impacts on visibility and other conditions in national parks and similar federal lands in certain areas; an additional impacts analysis as defined by 40 CFR 51.166(o) and 40 CFR 52.21(o); and an opportunity for public involvement. The EPA regulations for the PSD program are contained in 40 CFR 51.166 (applicable to air agencies that issue permits under EPA-approved state implementation plans (SIPs)) and 40 CFR 52.21 (the federal PSD program applicable to permits issued by the EPA or by delegated air agencies).

In 1997, the EPA revised its NAAQS for particulate matter to include standards for a new indicator, $PM_{2.5}$, 62 FR 38652 (July 18, 1997). The EPA revised the $PM_{2.5}$ NAAQS in 2006, 71 FR 61144 (October 17, 2006), and also in 2013, 78 FR 103086 (January 15, 2013). On October 20, 2010, the EPA published a final rule establishing PSD provisions to implement increments, SILs and an SMC for $PM_{2.5}$. Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$) Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC), 75 FR 64864 (Oct. 20, 2010). The SILs are screening tools that have been applied in PSD permitting to demonstrate that the proposed source's allowable emissions will not cause or contribute to a violation of the NAAQS or increment (such demonstration is required to obtain a permit). The SMC has been used to exempt sources from a requirement in the CAA to collect preconstruction monitoring data for up to 1 year before submitting a permit application in order to help determine existing ambient air quality.

On December 17, 2010, the Sierra Club petitioned the Court to review the 2010 $PM_{2.5}$ SILs and SMC final rule. On January 22, 2013, the Court granted a request from the EPA to vacate and remand to the EPA portions of the PSD regulations (40 CFR 51.166(k)(2) and 52.21(k)(2)) establishing the SILs for $PM_{2.5}$ so that the EPA could reconcile the inconsistency between the regulatory text and certain statements in the preamble to the 2010 final rule. *Sierra Club* v. *EPA,* 705 F.3d 458, 463–64 (D.C. Cir. 2013). The Court further vacated the portions of the PSD regulations (40 CFR 51.166(i)(5)(i)(*c*) and 52.21(i)(5)(i)(*c*)) establishing a $PM_{2.5}$ SMC, finding that the EPA lacked legal authority to adopt and use the $PM_{2.5}$ SMC to exempt permit applicants from the statutory requirement to compile and submit ambient monitoring data. *Id.* at 468–69.

III. Final Action

This final action removes from the CFR the affected $PM_{2.5}$ SILs and SMC provisions vacated by the Court's decision. Because the Court specifically vacated and remanded the $PM_{2.5}$ SILs in sections 51.166(k)(2) and 52.21(k)(2), the EPA is removing the text and reserving the paragraphs in sections 51.166(k)(2) and 52.21(k)(2). The Court explicitly declined to vacate the $PM_{2.5}$ ''significance levels'' at section 51.165(b)(2), and accordingly we are not taking any final action to make any change to that section. The EPA will initiate a separate rulemaking in the future regarding the $PM_{2.5}$ SILs that will address the remand.

Moreover, because the Court vacated the SMC provisions in 40 CFR 51.166(i)(5)(i)(*c*) and 52.21(i)(5)(i)(*c*), the EPA is revising the existing concentration for the $PM_{2.5}$ SMC listed in sections 51.166(i)(5)(i)(*c*) and 52.21(i)(5)(i)(*c*) to zero micrograms per cubic meter (0 $\mu g/m^3$). The EPA is not entirely removing $PM_{2.5}$ as a listed pollutant in the SMC provisions because to do so might lead to the issuance of permits that contradict the holding of the Court as to the statutory monitoring requirements. Both sections 51.166(i)(5)(iii) and 52.21(i)(5)(iii) permit the reviewing authority to exempt a permit applicant from the monitoring requirements if ''[t]he pollutant is not listed in paragraph (i)(5)(i) of this section.'' Were EPA to completely remove $PM_{2.5}$ from the list of pollutants in sections 51.166(i)(5)(i)(*c*) and 52.21(i)(5)(i)(*c*) of the PSD regulations, $PM_{2.5}$ would no longer be a listed pollutant and the paragraph (iii) provision could be interpreted as giving reviewing authorities the discretion to exempt permit applicants from the requirement to conduct monitoring for $PM_{2.5}$, in contravention of the Court's decision and the CAA. Instead, the EPA is revising the concentration listed in sections 51.166(i)(5)(i)(*c*) and 52.21(i)(5)(i)(*c*) to 0 $\mu g/m^3$. This means that there is no air quality impact level below which a reviewing authority has the discretion to exempt a source from the $PM_{2.5}$ monitoring requirements. By continuing to include $PM_{2.5}$ as a pollutant in the list contained in sections 51.166(i)(5)(i) and 52.21(i)(5)(i), with the numerical value replaced with 0 $\mu g/m^3$, we avoid any concern that paragraph (iii) of the two affected sections could be applied to excuse permit applicants from adequately addressing the monitoring requirement for $PM_{2.5}$.

The EPA is taking this action as a final rule without providing an opportunity for public comment or a public hearing because the EPA finds that the Administrative Procedure Act (APA) good cause exemption applies here. In general, the APA requires that general notice of proposed rulemaking shall be published in the **Federal Register**. Such notice must provide an opportunity for public participation in the rulemaking process. However, the APA does provide an avenue for an agency to directly issue a final rulemaking in certain specific instances. This may occur, in particular, when an agency for good cause finds (and incorporates the finding and a brief statement of reasons in the rule issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest. *See* 5 USC 553(b)(3)(B). The EPA has determined that it is not necessary to provide a public hearing or an opportunity for public comment on this action because the amendment of the regulations to remove the affected provisions for the $PM_{2.5}$ SILs and SMC is a necessary ministerial act. As the Court vacated the $PM_{2.5}$ SILs and SMC provisions, the EPA no longer has the authority to allow the use of the affected provisions after the Court's final decision. Therefore, in as much as this action to remove the affected regulatory text simply implements the decision of the Court, it would serve no useful purpose to provide an opportunity for public comment or a public hearing on this issue.

In addition, notice and comment would be contrary to the public interest because it would unnecessarily delay the removal of the unlawful $PM_{2.5}$ SIL and SMC provisions from the CFR, which could result in confusion on the part of the regulated industry and state, local and tribal air agencies about how the Court's decision affects the PSD regulations and PSD permitting. Promulgation of this rule soon after the Court's decision serves to clarify that

[2] An ''increment'' is the mechanism used in the PSD program to define significant deterioration of ambient air quality for a criteria pollutant. An increment is the maximum allowable increase in ambient concentrations of a pollutant in an area relative to a specified baseline concentration. In general, a change in ambient pollutant concentrations greater than the amount defined by an increment is thus considered to significantly deteriorate air quality and cannot be allowed.

sources cannot continue to rely on the PSD $PM_{2.5}$ SILs and SMC as was previously allowed. Given the substantial costs to the owner/operator of projects associated with delays and uncertainty, it is in the public interest for the EPA to amend the CFR without delay.

For these reasons, the EPA finds good cause to issue a final rulemaking pursuant to section 553 of the APA, 5 U.S.C. 553(b)(B). Therefore, the requirements of CAA section 307(d), including the requirement for public comment and hearing on proposed rulemakings, do not apply to this action.

IV. Implementation

The Court's vacatur of the $PM_{2.5}$ SILs in 40 CFR 51.166(k)(2) and 52.21(k)(2) and the SMC provisions in sections 51.166(i)(5)(i)(*c*) and 52.21(i)(5)(i)(*c*) means that these provisions can no longer be relied upon by either permit applicants or permitting authorities. The EPA has already stopped relying on sections 52.21(k)(2) and 52.21(i)(5)(i)(*c*) of the federal PSD regulations when we issue PSD permits. We have also advised state and local air agencies to which we have delegated our authority to issue permits under the federal PSD program (codified at section 52.21) not to rely on these provisions. Permitting authorities with EPA-approved SIPs containing any or all of the affected $PM_{2.5}$ SIL and SMC provisions previously allowed by sections 51.166(k)(2) and 51.166(i)(5)(i)(*c*) should remove their corresponding SILs provisions and revise the numerical value of the $PM_{2.5}$ SMC to 0 $\mu g/m^3$ (or make equivalent changes) as soon as feasible, which may be in conjunction with the next otherwise planned SIP revision. Furthermore, the EPA advises that these provisions as reflected in the existing state and local EPA-approved SIPs are unlawful and may not be applied even prior to their removal from the SIPs.

The Agency has provided a question and answer document regarding the implications of the Court's decision in various contexts (Guidance on the Applicability of the January 22, 2013 Circuit Court Decision on $PM_{2.5}$ Significant Impact Levels and Significant Monitoring Concentration). This document is available on the agency's Web site located at *http://www.epa.gov/nsr/guidance.html.*

V. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has previously approved the information collection requirements for the PSD program, including the requirements addressed by this rule, under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.,* and has assigned OMB control number 2060–0003.

Pursuant to title I, part C, of the Act, the PSD program requires the owner or operator to obtain a permit prior to either constructing a new major stationary source or making a major modification to an existing major stationary source. The information collection for sources under PSD results from the requirement for owners or operators to submit applications for NSR permits. For reviewing authorities, the information collection results from the requirement to process permit applications and issue permits, and to transmit associated information to the EPA. The EPA oversees the PSD program, and the information collected by sources and reviewing authorities is used to ensure that the program is properly implemented.

We anticipate that some sources currently in the permitting process will no longer be able to apply the $PM_{2.5}$ SMC to assert an exemption from the statutory requirement to submit air quality monitoring data as defined by CAA section 165(e)(2). The air quality monitoring data required to be submitted by permit applicants is often readily available as part of existing representative ambient air quality data available for public review. We also anticipate that some sources currently in the permitting process will no longer be able to apply the $PM_{2.5}$ SIL as an automatic ''safe harbor'' to satisfy the statutory requirement to show that the proposed source will not cause or contribute to a violation of the NAAQS or increment under CAA section 165(a)(3). Some sources may be required to conduct a more comprehensive air quality analysis in order to make the demonstration required by the statute where, for example, background air quality is close to the level of the NAAQS.

Any burden anticipated as a result of this rule has already been addressed in the analysis conducted for the final rule establishing PSD provisions to implement increments, SILs and a SMC for $PM_{2.5}$. Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$) Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC), 75 FR 64864 (Oct. 20, 2010). In that rule, over the 3-year period covered by the ICR,[3] we estimated an average annual burden totaling about 29,000 hours and $2.8 million for all industry entities that would be affected by the final rule. In addition, burden was calculated for state and local agencies to revise their SIPs to incorporate the changes. Over the 3-year period covered by the ICR for the 2010 rule, we estimated that the average annual burden for all State and local reviewing authorities will total about 7,500 hours and $581,000. Burden is defined at 5 CFR 1320.3(b). The burden calculated in the 2010 rule was a conservative estimate as the analysis assumed that the same number of sources would collect and submit air quality monitoring data and conduct a comprehensive air quality analysis despite the promulgation of the $PM_{2.5}$ SMC and SILs in that rule. Therefore, the current rule does not add any further burden that was not already anticipated and addressed by the previous 2010 rule and ICR.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

Today's good cause final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the APA or any other statute. This rule is not subject to notice-and-comment requirements under the APA or any other statute

[3] Information Collection Required for Changes to 40 CFR parts 51 and 52: Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC) June 2010.

because although the rule is subject to the APA, the agency has invoked the ''good cause'' exemption under 5 USC 553(b), and therefore it is not subject to the notice-and-comment requirement.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This good cause final action addresses the Court's vacatur of certain PSD regulations.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This good cause final action addresses the Court's vacatur of certain PSD regulations. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. This good cause final action addresses the Court's vacatur of certain PSD regulations. Thus, Executive Order 13175 does not apply to this rule.

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

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

I. National Technology Transfer and Advancement Act

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

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

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

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

The EPA has determined that this good cause final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective on December 9, 2013.

VI. Statutory Authority

The statutory authority for this action is provided by sections 165–169 and 301 of the Act as amended (42 U.S.C. 7475–7479 and 7601).

VII. Judicial Review

Under section 307(b)(1) of the Act, judicial review of this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 7, 2014. Under section 307(b)(2) of the CAA, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

List of Subjects

40 CFR Part 51

Administrative practices and procedures, Air pollution control, Environmental protection, Intergovernmental relations.

40 CFR Part 52

Administrative practices and procedures, Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations.

Dated: November 26, 2013.

Gina McCarthy,

Administrator.

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

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Section 51.166 is amended as follows:

■ a. By removing the words ''4 μg/m³, 24-hour average,'' and adding in their place ''0 μg/m³'' in paragraph (i)(5)(i)(*c*).

■ b. By adding a note to paragraph (i)(5)(i)(*c*).

■ c. By removing and reserving paragraph (k)(2).

The addition reads as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(i) * * *

(5) * * *

(i) * * *

(*c*) Note to paragraph (i)(5)(i)(*c*): In accordance with *Sierra Club* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013), no exemption is available with regard to $PM_{2.5}$.

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 4. Section 52.21 is amended as follows:

■ a. By removing the words ''4 μg/m³, 24-hour average,'' and adding in their place ''0 μg/m³'' in paragraph (i)(5)(i)(*c*).

■ b. By adding a note to paragraph (i)(5)(i)(*c*).

■ c. By removing and reserving paragraph (k)(2).

The addition reads as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(i) * * *

(5) * * *

(i) * * *

(*c*) Note to paragraph (i)(5)(i)(*c*): In accordance with *Sierra Club* v. *EPA,* 706 F.3d 428 (DC Cir. 2013), no exemption is available with regard to $PM_{2.5}$.

* * * * *

[FR Doc. 2013–29196 Filed 12–6–13; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 300–90

[FTR Amendment 2013–04; FTR Case 2011–310; Docket Number 2013–0012, Sequence 1]

RIN 3090–AJ23

Federal Travel Regulation (FTR); Telework Travel Expenses Test Programs

AGENCY: Office of Government-wide Policy, U.S. General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is amending the Federal Travel Regulation (FTR) to incorporate the Telework Enhancement Act of 2010, which establishes and authorizes telework travel expenses test programs, authorizes reimbursement for any necessary travel expenses in conjunction with such a test program in lieu of any payment otherwise authorized or required by the FTR, and permits waiver of travel expense reimbursements by participating employees.

DATES: *Effective date:* This final rule is effective January 8, 2014.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Rick Miller, Office of Governmentwide Policy, at 202–501–3822 or email at *rodney.miller@gsa.gov*. Please cite FTR Amendment 2013–04, FTR case 2011–310. Contact the U.S. General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001, 202–501–4755, for information pertaining to status or publication schedules.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to 5 U.S.C. 5707, the Administrator of General Services is authorized to prescribe necessary regulations to implement laws regarding Federal employees who travel in the performance of official business away from their official stations. The overall implementing authority is the FTR, codified in Title 41 of the Code of Federal Regulations, chapters 300–304 (41 CFR chapters 300–304).

This final rule incorporates Section 3 of Public Law 111–292, the ''Telework Enhancement Act of 2010,'' codified in 5 U.S.C. 5711, which authorizes the creation of agency telework travel expenses test programs. Under a telework travel expenses test program, if a participating employee voluntarily relocates from his/her official duty station to a new official station, then the employing agency can establish a reasonable maximum number of occasional visits to the pre-existing official station (*e.g.,* one visit per month/quarter, four times a year) before that participating employee is eligible for payment of any accrued travel expenses by that agency for travel to the pre-existing official station. The term ''voluntarily relocate'' means that a participating employee requests to relocate from the pre-existing official station to a telework location, and therefore, the agency has not made a determination that relocation is in the best interest of the Government.

An agency shall include in any request to the Administrator for approval of such a test program an analysis of the expected cost and benefits and a set of criteria for evaluating the effectiveness of the program. As provided in 5 U.S.C. 5711, under an approved test program, an agency may provide a participating employee with the option to waive any payment authorized or required under 5 U.S.C. Chapter 57, Subchapter 1.

An agency will be required to submit an annual report on the results of the test program including overall costs and benefits.

Pursuant to this authority, this final rule amends 41 CFR chapter 300 by adding part 300–90 regarding authority and procedures for agencies to conduct a telework travel expenses test program.

B. Executive Orders 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 rule has not been designated a ''significant regulatory action'' and is not economically significant, under section 3(f) of E.O. 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

C. Regulatory Flexibility Act

This final rule will not 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 the revisions are not considered

substantive. This final rule is also exempt from the Administrative Procedure Act per 5 U.S.C. 553 (a)(2), because it applies to agency management or personnel.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from Congressional review prescribed under 5 U.S.C. 801, since it relates solely to agency management or personnel.

List of Subjects in 41 CFR Part 300–90

Government employees, Travel and transportation expenses.

Dated: October 29, 2013.

Dan Tangherlini,

Acting Administrator of General Services.

For the reasons set forth in the Preamble, under 5 U.S.C. 5701–5711, 41 CFR chapter 300 is amended by adding part 300–90 to read as set forth below:

PART 300–90—TELEWORK TRAVEL EXPENSES TEST PROGRAMS

Sec.

300–90.1 What is a telework travel expenses test program?
300–90.2 Who may authorize test programs?
300–90.3 What must be done to apply for test program authority?
300–90.4 How many test programs may be authorized by GSA throughout the Government?
300–90.5 What factors will GSA consider in approving a request for a telework travel test program?
300–90.6 What is authorized under the test programs?
300–90.7 What is the duration of test programs?
300–90.8 What must we do to apply for a test program extension?
300–90.9 What reports are required for a test program?

Authority: 5 U.S.C. 5707 and 5711.

§ 300–90.1 What is a telework travel expenses test program?

It is a program that permits an agency to test new and innovative methods of reimbursing telework travel expenses without seeking a waiver of current rules or authorizing legislation.

§ 300–90.2 Who may authorize test programs?

The Administrator of General Services may authorize agencies to conduct test programs when the Administrator determines the proposed tests to be in the interest of the Government.

§ 300–90.3 What must be done to apply for test program authority?

The head of the agency or designee must design the test program to enhance cost savings or other efficiencies for the Government and submit in writing to the Administrator of General Services (Attention: MA), 1800 F Street NW., Washington, DC 20405–0001:

(a) An explanation of the test program;

(b) If applicable, the specific provisions of the FTR from which the agency is deviating, and confirmation between the agency and the participating employee of any waivers of entitlements by the employee under 5 U.S.C. Chapter 57, Subchapter I;

(c) An analysis of the expected costs and benefits;

(d) A set of criteria for evaluating the effectiveness of the program; and

(e) Agency procedures regarding how and when a telework program is terminated for the participating employee when he or she voluntarily relocated to a telework location.

§ 300–90.4 How many test programs may be authorized by GSA throughout the Government?

No more than 10 telework travel expense test programs may be conducted at the same time.

§ 300–90.5 What factors will GSA consider in approving a request for a telework travel test program?

The following factors will be considered:

(a) Potential cost savings or other efficiencies that accrue to the Government;

(b) Application of results to other agencies;

(c) Feasibility of successful implementation;

(d) Number of tests, if any, already authorized to the same agency;

(e) Whether the request meets the requirements of § 300–90.3;

(f) Other agency requests under consideration at the time of submission; and

(g) Uniqueness of proposed test.

§ 300–90.6 What is authorized under the test programs?

Under a telework expenses test program authorized by the Administrator of General Services, the agency may:

(a) Pay any necessary telework travel expenses in lieu of payments authorized or required under 5 U.S.C. Chapter 57, Subchapter I for employees participating in a telework program;

(b) Provide a participating employee with the option to waive any payment authorized or required under 5 U.S.C. Chapter 57, Subchapter 1; or

(c) Establish, for a participating employee who voluntarily relocates from the pre-existing duty station of that employee, a reasonable maximum number of occasional visits to the pre-existing duty station before that employee is eligible for payment of any incurred travel expenses by that agency for travel to the pre-existing duty station.

§ 300–90.7 What is the duration of test programs?

The duration of a test program is up to four years from the date of authorization unless terminated prior to that time by the Administrator of General Services. The agency conducting a test program may also terminate the test program at any time by providing written notice of the termination to the Administrator of General Services. The Administrator of General Services may grant test program extensions of up to an additional 24 months, but not beyond December 8, 2017, the expiration of the test authority (see § 300–90.8).

§ 300–90.8 What must we do to apply for a test program extension?

The head of the agency or designee must submit a request to extend the test program to the Administrator of General Services (Attention: MA), 1800 F Street NW., Washington, DC 20405–0001, not later than 120 days prior to the expiration of the test period. The request for extension must:

(a) Contain the test program results to that date;

(b) Clearly enumerate the benefits, qualitatively and/or quantitatively, of granting a test program extension; and

(c) Specify the duration of time for which an extension is requested.

§ 300–90.9 What reports are required for a test program?

(a) The Administrator of General Services must submit to Congress a copy of any approved or extended test program at least 30 days before the effective date of the authorized test program or extension.

(b) The agency authorized to conduct the test program must submit:

(1) An annual report on the progress of the test, submitted to the U.S. General Services Administration, Office of Government-wide Policy, Office of

Asset and Transportation Management (Attention: MA), Washington, DC 20405. The Administrator or designee may terminate the test program approval for failure to comply with this reporting requirement; and

(2) A final report on the results of the test program must be submitted to the U.S. General Services Administration, Office of Government-wide Policy, Office of Asset and Transportation Management (Attention: MA), Washington, DC 20405, the Telework Managing Officer of that agency, and to the appropriate committees of Congress not later than 3 months after completion of the program.

(c) All reports must include quantitative or qualitative assessments, or both, clearly evaluating the results of the test program and enumerating benefits and costs. The results in a report may include:

(1) The total number of visits a participating employee made to the pre-existing official station;

(2) The total number of visits and travel expenses paid by the agency;

(3) The total number of visits and travel expenses paid by the participating employee; or

(4) Any other information the agency determines useful to aid the Administrator of General Services, the Telework Managing Officer(s), and Congress in understanding the test program and the impact of the program.

[FR Doc. 2013–29215 Filed 12–6–13; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 22

[Docket No. FWS–R9–MB–2011–0054; FF09M21200–134–FXMB1231099BPP0]

RIN 1018–AX91

Eagle Permits; Changes in the Regulations Governing Eagle Permitting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We revise the regulations for permits for take of golden eagles *(Aquila chrysaetos)* and bald eagles *(Haliaeetus leucocephalus)* that is associated with, but not the purpose of, an activity. We extend the maximum term for programmatic permits to 30 years, while maintaining discretion to issue permits of shorter duration as appropriate. The permits must incorporate conditions specifying additional measures that may be necessary to ensure the preservation of eagles, should monitoring data indicate the need for the measures. This change will facilitate the responsible development of renewable energy and other projects designed to operate for decades, while continuing to protect eagles consistent with our statutory mandates. For a permit valid for 5 years or more, we will assess an application processing fee sufficient to offset the estimated costs associated with working with the applicants to develop site plans and conservation measures, and prepare applications, and for us to review applications. We also will collect an administration fee when we issue a permit and at 5-year intervals.

DATES: This rule goes into effect on January 8, 2014.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Migratory Bird Management, at 703–358–1714.

SUPPLEMENTARY INFORMATION:

Background

The Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d) (Eagle Act or BGEPA) prohibits take of bald eagles and golden eagles by otherwise lawful activities, except pursuant to Federal regulations. The Eagle Act regulations at title 50, part 22 of the Code of Federal Regulations (CFR), define the ''take'' of an eagle to include the following broad range of actions: ''pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb'' (§ 22.3). The Eagle Act allows the Secretary of the Interior to authorize certain otherwise prohibited activities through regulations. The Secretary is authorized to prescribe regulations permitting the ''taking, possession, and transportation of [bald eagles or golden eagles] . . . for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes, or . . . for the protection of wildlife or of agricultural or other interests in any particular locality,'' provided such permits are ''compatible with the preservation of the bald eagle or the golden eagle'' (16 U.S.C. 668a).

On September 11, 2009, we, the U.S. Fish and Wildlife Service (FWS or Service), published a final rule that established new permit regulations under the Eagle Act for incidental take of eagles (74 FR 46836) while conducting otherwise lawful activities. The regulations at 50 CFR 22.26 provide for permits to take bald eagles and golden eagles when the taking is associated with, but not the purpose of, an otherwise lawful activity. The regulations provide for both standard permits, which authorize individual instances of take that cannot practicably be avoided, and programmatic permits, which authorize recurring take that is unavoidable even after implementation of Advanced Conservation Practices (ACPs). We have issued standard permits for commercial and residential construction, transportation projects, maintenance of utility lines and dams, and in a variety of other circumstances where take is expected to occur in a limited timeframe and specific location. For instance, take that does not reoccur, such as temporary abandonment of a nest, or is caused solely by indirect effects, does not require a programmatic permit, but may require a standard permit.

''Programmatic take'' of eagles is defined at 50 CFR 22.3 as ''take that is recurring, is not caused solely by indirect effects, and that occurs over the long term or in a location or locations that cannot be specifically identified.'' For additional explanation of programmatic take and programmatic permits, see 74 FR 46841–46843.

We may issue programmatic permits for disturbance and for take resulting in mortalities, based on implementation of ACPs developed in coordination with us. ACPs are ''scientifically supportable measures approved by the Service that represent the best available techniques to reduce eagle disturbance and ongoing mortalities to a level where remaining take is unavoidable'' (50 CFR 22.3). Most take authorized under § 22.26 has been in the form of disturbance. However, permits may authorize lethal take that is incidental to an otherwise lawful activity, such as mortalities caused by collisions with wind turbines, powerline electrocutions, and other potential sources of incidental take.

On the same day that the proposed rule for this rulemaking was published in the **Federal Register** (77 FR 22267, April 13, 2012), we also published an advance notice of proposed rulemaking (ANPR) looking at all aspects of the 2009 permit regulations (see 77 FR 22278). The ANPR sought public input on how the regulations could be revised to be more efficient or otherwise improved. The notice highlighted three issues about which we were particularly interested in hearing from the public: (1) The standard for programmatic permits that take must be reduced to the point where it is unavoidable; (2) mitigation requirements and options; and (3) our interpretation of the Eagle Act ''Preservation Standard.'' We have reviewed the public comments on the ANPR. We intend to propose additional revisions to the permit regulations based

on the comments received on the ANPR and other factors. Several comments have suggested that this tenure rule should be labeled as an interim rule, or state in the rule text that the rule is effective until it is amended or replaced. In promulgating this final rule, we note that this rule is effective until amended or replaced and that, as such, labeling this rule with interim rule text is unnecessary. Moreover, it is our intention to move ahead in the near future with the additional rulemaking that we initiated through the ANPR. That rulemaking will provide an opportunity to revisit all aspects of the 2009 regulations, as well as the provisions of this tenure rule.

Since we published the proposed rule, we have finalized the Eagle Conservation Plan Guidance (ECPG) Module I for Land-based Wind Energy. The ECPG describes the processes that the Service recommends wind energy permit applicants use to conduct eagle surveys, evaluate risk of activities to eagles, avoid and minimize risks to eagles, compensate for unavoidable take, and apply an adaptive management framework. For a more comprehensive discussion of any of these activities related to the permitting of wind energy facilities, please see the ECPG, which is available at: *http://www.fws.gov/migratorybirds/PDFs/Eagle%20Conservation%20Plan%20Guidance-Module%201.pdf.*

A recent assessment of the status of the golden eagle in the coterminous western United States showed that, over the past 40 years, populations have been trending slightly downward in some areas and upwards in others, such that on balance the population appears stable in response to existing demographic factors (Millsap et al. 2013).

Permit Duration

In February 2011, we published draft Eagle Conservation Plan Guidance that provided information on how to prepare Eagle Conservation Plans and apply for eagle take permits. Many commenters recommended that we extend the maximum term of the permit, as we are doing with this rule. Since publication of the 2009 final rule, we have reviewed applications from proponents of renewable energy projects, such as wind and solar power facilities, for programmatic permits to authorize eagle take that may result from both the construction and ongoing operations of renewable energy projects. During our review, it became evident that the 5-year term limit imposed by the 2009 regulations (see 50 CFR 22.26(h)) should be extended to better correspond to the operational timeframe of renewable energy projects. On April 13, 2012, we proposed to amend the regulations to provide for terms of up to 30 years for programmatic permits (77 FR 22267). In today's rulemaking, we are finalizing that proposal with minor modifications as described below. We now: (1) Clarify what will happen during the 5-year reviews; (2) specify that we will make annual reports and 5-year compilations available to the public; and (3) clarify the definition of ''low risk'' to eagles. We will revisit the provisions of this rule during our review of the 2009 eagle rule.

In light of the longer permit durations that we are adopting in this rulemaking, we intend, if appropriate, to incorporate into the terms and conditions of the permit a commitment from the applicant to implement additional, specific mitigation measures. The additional measures would be triggered if the authorized level of take is exceeded or if new scientific information demonstrates that the additional mitigation measures are necessary for the preservation of eagles. These additional, specific mitigation measures will be described in detail in the permit, which will describe the consequences to, and requirements of, the applicant if take greater than was predicted occurs or new information about eagle populations affected by the activity becomes available, for example, unexpected declines in affected eagle populations. However, if the additional mitigation measures prove inadequate to meet the Eagle Act's preservation standard, the regulations at § 22.26(c)(7) allow us to further amend any programmatic permits to safeguard eagle populations—consistent with the limits jointly agreed to at the outset of each permit. Permit revocation is a final option if an activity is not compatible with eagle preservation. We anticipate that implementing additional mitigation measures identified as permit conditions will reduce the likelihood of amendments to, or revocation of, the permit.

If the Service and applicant determine that the proposed activity may be suitable for testing experimental ACPs, we will identify such measures and protocols for testing their effectiveness. The Service anticipates limiting costs associated with studying experimental ACPs associated with any permit.

All quantifiably predicted or verified take (based on past monitoring) that exceeds take thresholds for the eagle management unit for the species identified in the 2009 Environmental Assessment (U.S. Fish and Wildlife Service; Final Environmental Assessment: Proposal to Permit Take as Provided Under the Bald and Golden Eagle Protection Act; April 2009) must be offset with compensatory mitigation that results in no net loss to the population. For activities without ACPs, we will identify potential risks that are not addressed by avoidance and minimization measures and experimental ACPs that might address those risks. We and the permittee will agree on the upper limit on the costs to implement and on trigger points tied to post construction monitoring that, if reached, would result in implementation of the experimental ACPs. If the project causes fatalities that meet or exceed the amount authorized by the permit, and if experimental ACPs or additional conservation measures cannot be implemented to reduce those fatalities, we may have to rescind the permit for that project to comply with the ''stable or increasing breeding population'' standard for protection of the species, as specified in the 2009 final rule.

Adaptive Management Process

Management of some types of facilities, such as wind energy facilities, to minimize eagle take, entails a set of recurrent decisions made in the face of uncertainty. The Department of the Interior (DOI) has a long history of approaching such decisions through a process of adaptive management (Williams et al. 2007). The purpose of adaptive management is to improve long-term management outcomes, by recognizing where key uncertainties impede decision-making, seeking to reduce those uncertainties over time, and applying that learning to subsequent decisions (Walters 1986).

In the case of managing eagle populations in the face of energy development, there is considerable uncertainty. For example, evidence shows that in some areas or specific situations, large soaring birds, specifically raptors, are especially vulnerable to colliding with wind turbines (Barrios and Rodriguez 2004, Kuvlesky et al. 2007). However, we are uncertain about the relative importance of different factors that influence that risk. We are also uncertain which strategies would best mitigate the effects of wind energy developments on raptors. Populations of raptors with relatively low fecundity, such as golden eagles, are more susceptible to population declines due to new sources of mortality. We face challenges managing eagle populations because we need better information about: (1) Factors that affect collision risk; (2)

factors affecting population trends; and (3) efficacy of various avoidance and mitigation measures. Our goals are to maintain eagle populations while authorizing limited incidental take, use adaptive management to address uncertainty, and improve our predictive capability over time. Applying a systematic, nationally consistent strategy of management and monitoring is necessary to accomplish these goals.

Advanced Conservation Practices and Adaptive Management

We believe that the best course of action is to work with industry to develop ACPs for wind projects and other activities as an element of adaptive management associated with the programmatic take permit process. This process will be applied to other types of projects and activities where the impacts of the activity are uncertain and measures to reduce potential take have not been well-tested. A project developer or operator will be required to implement all available measures to avoid and minimize incidental take of eagles at a project. For wind projects, the Service and the project developer or operator will work together to minimize the impacts of site-specific, and possibly turbine-specific, factors that may kill or disturb eagles, and develop ACPs to reduce or eliminate risks that are substantiated by the best available science. Unless we determine that there is a reasonable scientific basis to implement experimental ACPs, such potentially costly measures will be deferred until such time as a predefined trigger, such as a threshold of eagle use of a defined area or an eagle fatality, in the permit is reached. At that point, consistent with the adaptive management process, the permittee will be required to implement the additional ACP as a condition of the programmatic eagle take permit. In this way, a project developer or operator will not be required to expend funds to address a problem that may not exist.

The Service has not currently identified ACPs for wind energy projects that reduce eagle disturbance and blade-strike mortality. The development of ACPs for wind energy facilities has been hampered by the lack of standardized scientific studies of potential ACPs. We have concluded that the best way to obtain the needed scientific information is to work with industry to develop ACPs for wind projects, and perhaps for other industries, as part of an adaptive management regime and comprehensive research program tied to the programmatic-take-permit process.

ACPs will be implemented at operating wind facilities with eagle take permits on an ''experimental'' basis. The ACPs are considered experimental because they have not yet been scientifically demonstrated to be effective. The experimental ACPs would be scientifically evaluated for their effectiveness, as described in detail in the Service's Eagle Conservation Plan Guidance, and based on the results of these studies, could be modified in an adaptive management regime. This approach will provide the needed scientific information for the future establishment of formal ACPs, while enabling wind energy facilities to move forward in the interim.

If a permit trigger is reached, developers or operators would be required to implement the potentially effective experimental ACP(s) and to monitor future eagle take relative to the ACP(s). As the results from monitoring experimental ACPs across a number of facilities accumulate and are analyzed as part of the adaptive management process, scientific information in support of certain ACPs may accrue, whereas other ACPs may show little value in reducing take. If we determine that the available science demonstrates an experimental ACP is effective in reducing eagle take, we will approve that ACP and require its implementation when and where warranted and feasible. If this approach is successful in the context of wind projects, the Service will consider employing a similar process in developing permitting provisions for other industries as necessary.

Programmatic Permit Evaluation Process

For projects with programmatic eagle take permits, intensive monitoring to estimate the actual annual fatality rate and to assess disturbance effects may be required in accordance with monitoring provisions at 50 CFR 22.26(c)(2) and (3). Permittees will be expected to submit annual reports on eagle monitoring and any eagles found injured or dead at their facility. The Service will make mortality information from these annual reports available to the public. At no more than 5-year intervals from the date a permit is issued, the permittee will compile a report documenting fatality and other pertinent information for the project and submit the report to the Service. The Service will review the information with the permittee to determine if a trigger point has been reached that requires implementation of one or more experimental ACPs or additional mitigation measures designed to reduce eagle mortalities. Additional post-implementation monitoring will be required to determine the effectiveness of the experimental ACPs. The Service will make mortality information from the 5-year compilation report available to the public.

We will evaluate each permit issued for more than 5 years at 5-year intervals. These evaluations will reassess fatality rates, effectiveness of measures to reduce take, the appropriate level of compensatory mitigation, and eagle population status. Depending on the findings of the review, we may make changes to a permit consistent with its terms and conditions, including any of the following:

(i) Update the fatality predictions for the facility;

(ii) require implementation of additional conservation measures as described in the permit;

(iii) update monitoring requirements;

(iv) revise compensatory mitigation requirements in accordance with the permit;

(v) require revisions of the ACPs and additional mitigation measures; or

(vi) suspend or revoke the permit.

During the initial 5-year review, in consultation with the permittee, the Service will determine compensatory mitigation for future years for the project, taking into account the observed levels of mortality and any reduction in that mortality that is expected due to implementation of additional experimental and/or established ACPs. Monitoring to determine the effectiveness of these ACPs and mitigation efforts will be a permit condition. We will modify the compensatory mitigation process to adapt to any improvements in our knowledge base as new data become available.

The specific objectives, duration, or extent of post-construction monitoring will be tailored to the specific conditions at each site. For example, the objectives of post-construction monitoring at a low-risk project will likely be to confirm that actual fatalities do not exceed some trigger level (likely much higher than the predicted fatality rate) rather than to confirm the predicted fatality, given practical limitations on the sampling that would be needed to confirm precise rates for such rare events. On the other hand, at sites where modest or relatively high numbers of fatalities are predicted, increased monitoring (both in rigor and duration) commensurate with the increased potential population effect will likely be required, and at sufficient intensity to provide a general indication of the actual fatality rate.

NEPA on Adaptive Management Elements

The adaptive management process relevant to each programmatic permit will need to be reviewed as part of the analysis required under the National Environmental Policy Act (NEPA) for each permit prior to permit issuance. If a permittee subsequently proposes to undertake additional measures beyond what was required in an issued permit and accompanying NEPA document, the Service will consider whether additional NEPA analysis is warranted.

Right of Succession and Transferability of Permits

We recognize that a succession of owners may purchase or resell the affected company or land during the term of the permit. Accordingly, we are revising regulations at 50 CFR 13.24 (Right of succession by certain persons) and 13.25 (Transfer of permits and scope of permit authorization) to allow a programmatic permit to be transferable to the new owner of a project and to ensure that any successors to the permittee commit to carrying out the conditions of the permit.

Regulations at 50 CFR 13.24 and 13.25 impose restrictions on the right of succession and transferability of Service permits. These restrictions are appropriate for most wildlife permitting situations, but they are impractical and unduly restrictive for situations in which the permitted activity will be conducted over a lengthy period of years and ownership of the land or facility covered by a permit could reasonably be expected to change over that period.

The regulations at 50 CFR 13.24 allow for one or more successors to a permit: The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; or a receiver or trustee in bankruptcy or a court-designated assignee for the benefit of creditors. For most Service permits, with the exception of certain long-term permits issued under Endangered Species Act (ESA) regulations, all the potential successor has needed to do to gain the privileges of the permit is to ''furnish the permit for endorsement'' to the permit office within 90 days from the date the successor begins to carry out the permitted activity. Through this rulemaking, a long-term Eagle Act permit will be subject to the same provisions that have applied to most Service permits. The permit transfer is subject to our determination that the successor meets all of the qualifications under this part for holding it; provides adequate written assurances of sufficient funding for any applicable conservation plan or agreement; demonstrates the willingness to implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and provides other information necessary for processing the request.

Section 13.25 addresses the circumstances in which someone other than the person to whom a permit is issued can carry out actions authorized by the permit. As a general matter, anyone who is under the ''direct control'' of the permittee or ''under contract to the permittee for purposes authorized by the permit'' can carry out such actions. For Eagle Act permits issued to certain governmental authorities, new paragraph (f) of § 13.25 clarifies that those who are under the jurisdiction of the permittee are considered to be under the permittee's direct control, in much the same manner as existing paragraph (e) treats ESA permits issued in association with habitat conservation plans, safe harbor agreements, and candidate conservation agreements with assurances. Similarly, paragraph (b) has been revised to allow Eagle Act and these three types of ESA permits to be transferred to one or more transferees based upon a satisfactory joint submission from the permittee and proposed transferee(s). Thus, this provision makes possible multi-participant or programmatic arrangements in which FWS can issue an ESA or Eagle Act permit to a single permittee who can then transfer the authority of that permit to one or more transferees with the approval of the FWS. Currently, paragraph (c) allows for the transfer of Safe Harbor and Candidate Conservation Agreements with Assurances, but only in the case of the transfer of lands subject to such agreements. The change made to 50 CFR 13.25(b) would allow transfer in additional circumstances by allowing the holder of an Eagle Act permit or a permit authorizing a programmatic Safe Harbor or Candidate Conservation Agreement with Assurances to transfer such permit to individual qualifying property owners, subject to FWS approval.

Permit Application Processing Fee and Administration Fee

This rule also amends the schedule of permit application processing fees set forth at 50 CFR 13.11 by substantially increasing the fees to be charged for processing applications for programmatic permits for incidental take of bald or golden eagles. However, Federal, State, tribal, and other governmental agencies are exempt from the requirement to pay permit application processing fees for any permits issued by the Service (see 50 CFR 13.11(d)(3)(i)). This rule does not affect that exemption.

Experience to date has demonstrated that the current $1,000 permit application processing fee for programmatic permits is a very small percentage of the actual cost of reviewing and processing programmatic permit applications and providing technical assistance. With the anticipated costs of administering the permits, particularly those that authorize the taking of eagles over a decade or more, the current fee will be insufficient to cover Service expenses.

Executive Branch agencies have been directed to recover costs for providing special benefits to identifiable recipients *(http://www.whitehouse.gov/omb/circulars_a025)*. Recovered costs would include those for working with applicants, assessing permit applications, and undertaking monitoring associated with each permit. The increased application processing fee reflects the estimated cost to the Service of developing a management plan for monitoring the effectiveness of the terms and conditions of the permit.

Most of the costs to the Service will occur during the development and initiation of projects. The application processing fee combines both the costs of working with the applicant prior to submitting a permit application and processing the application. We estimate the cost of processing an eagle take permit application to be approximately $36,000. Accordingly, we establish a $36,000 permit application processing fee for a programmatic permit. We may not approve all permit applications. As with other permits issued by the Service, we will not refund the application processing fee unless the application is withdrawn before we have significantly processed it (50 CFR 13.11(d)(i)).

To recover costs to the Service for monitoring and working with the permittees over the lives of the permits, we also will collect a permit administration fee of $2,600 upon each 5-year review of a permit. Therefore, the total administration fees range from $2,600 for a permit with tenure of 5 years to $15,600 for a 30-year permit.

We typically assess a fee for processing substantive amendments to permits during the tenure of a permit. For all programmatic permits, regardless of duration, the amendment processing fee will be $1,000, and the fee for

processing the transfer of a programmatic permit will be $1,000.

For some ongoing activities, such as the operation of some types of infrastructure, there is a possibility that one or more eagles will be taken during the lifetimes of the activities, but take is unlikely. In such cases, we expect many project proponents will not feel compelled to apply for a permit. Alternatively, some developers may seek the security provided by a permit if an eagle is killed or injured. This rule establishes a separate fee category for ''low-risk'' projects. This category is based on the concept we introduced in the proposed rule as ''small-impact.'' A number of commenters thought that term was confusing, so we are replacing it with ''low-risk.'' The idea behind the ''low-risk'' category is to substantially reduce permit application processing fees for projects that we can identify, without committing substantial staff resources, as likely to have minimal or no impacts to eagles even though take is possible over the lifetime of the project. Because applications for these projects will require significantly less work for us to evaluate, we are establishing a permit application processing fee of $8,000 for ''low-risk'' projects. The administration fee for these permits is $500 every 5 years.

Under ''low risk'' scenarios, the reduced costs to the Service result from a variety of factors, including the fact that the project proponent, rather than the Service, must document the low risk to eagles, and that there is no need to develop a robust adaptive management framework for a long-term permit. In contrast, if a reliable model indicates that the project will take even one eagle, the workload of the Service will substantially increase.

In our April 2012 proposed rulemaking for these regulations, we proposed a permit application processing fee of $5,000. The $8,000 fee we are codifying today is necessary to capture what we estimate to be the cost of providing technical assistance to low-risk project developers and reviewing and verifying the data they provide in the permit application to ensure that they meet the criteria for low-risk permits.

There are potential benefits to eagles from issuing permits in situations in which take is unlikely, because such ''low-risk'' permits will require monitoring and reporting (although less than is required for typical long-term programmatic permits), providing us with additional data on eagle use of the project areas and potential impacts of the permitted activities.

To qualify as ''low-risk,'' the applicant must use models and predictive tools that we have approved to demonstrate that take is expected to be less than 0.03 eagles per year (or less than one eagle over 30 years). This rule establishes the following regulatory definition of ''low-risk,'' which will be codified at 50 CFR 13.11(d)(4): ''Low-risk'' means a project or activity is unlikely to take an eagle over a 30-year period and the applicant for a permit for the project or activity has provided the Service with sufficient data obtained through Service-approved models and/or predictive tools to verify that the take is likely to be less than 0.03 eagles per year.

Responses to Comments

Comment: Extending programmatic permit tenure to 30 years contradicts the Service's statement in the **Federal Register** notice for the 2009 regulations that it should not issue permits for periods longer than 5 years ''because factors may change over a longer period of time such that a take authorized much earlier would later be incompatible with the preservation of the bald eagle or the golden eagle.''

Response: The Service believes that the 5-year limitation on the duration of BGEPA permits is an unnecessary impediment for activities or projects that will last more than 5 years. By extending the duration of permits we expect to have more entities apply for permits and thereby work with our biologists to avoid and minimize and compensate for eagle impacts. Adaptive management elements that will be built into permits and our 5-year evaluations provide the Service with the ability to manage the permits to ensure adequate mitigation is provided by permittees to offset predicted detrimental impacts to eagles throughout the life of the permit. The Service retains the discretion to issue a permit for a term of less than 30 years, as appropriate.

Comment: The ability to predict and plan over a 30-year period is extremely limited because many factors that affect eagles and eagle populations will change considerably over 30 years. And the uncertainties regarding the population trajectories of golden and bald eagles are too great to justify issuing 30-year programmatic permits. The Service does not have sufficient data about current populations of golden eagles, much less 30 years from now. Changes in adult survival can disproportionately influence population growth as compared to changes in birth rates. Population declines can occur very rapidly, particularly relative to the slow response time of government and particularly in light of climate change.

Response: The adaptive management elements that will be built into permits, along with our 5-year evaluations, provide the Service with the ability to manage the permits to ensure adequate mitigation is provided by permittees to offset detrimental impacts to eagles throughout the life of the permit.

Comment: Cumulative impacts from wind power on eagles are highly uncertain as there have been no large-scale studies on either a regional or national level. In addition to direct mortalities, cumulative impacts from loss of habitat may be significant and do not seem to be accounted for in the regulations or the Service's draft Eagle Conservation Plan Guidance. What would happen if the Service needed to decrease regional take thresholds and existing 30-year take permits put permittees over the threshold? If cumulative impacts prove to be unsustainable for eagles, how would the Service decide which permits to suspend or revoke?

Response: Under the terms of the 2009 permit regulation and associated EA, eagle take permits that exceed take thresholds for the affected regional eagle management units, either singly or in combination with other analyzed forms of take, must require that the eagle take be offset so that there is no net loss to the breeding population. Take thresholds may be adjusted up or down over time based on the changing status of eagle populations. If a take threshold is lowered, resulting in a programmatic eagle take permit exceeding the new threshold, the Service will work with the permittee to implement additional measures to avoid and minimize take and implement compensatory mitigation pursuant to the adaptive management process. The permittee may be able to undertake additional conservation measures in the form of operational changes or compensatory mitigation. If there are multiple permits within the affected eagle management unit, each permittee would have to implement or contribute in proportion to additional mitigation.

Comment: Golden eagles could require ESA listing during the next 30 years. How does the Service plan to address the following three questions?

(1) If the golden eagle (or either species) were listed as a threatened or endangered species, and a wind energy developer then later sought to construct a facility on private land that might result in eagle take, which permits would the developer need to obtain to avoid liability for incidental take: An incidental take permit (ITP) under the

ESA, a programmatic take permit under the Eagle Act, both permits, or a combined single permit?

(2) If a developer were issued an Eagle Act programmatic permit for a wind facility on private land, and the golden eagle (or either species) were then later listed as a threatened or endangered species during the life of the permit, would the existing programmatic take permit exempt the permittee from the take prohibition under the ESA or would the permittee need to apply for an ESA Section 10 ITP to avoid liability?

(3) If the permitted facility in (2) had a federal nexus at the time the Eagle Act programmatic permit was issued (e.g., the project required fill of wetlands and a 404 permit issued by the Federal Government), would an ESA Section 7 consultation be required at the time of listing with respect to the eagle species covered by the programmatic permit?

Response: If golden or bald eagles are listed as threatened or endangered under the ESA, a project proponent or operator should evaluate the risk to the listed species, and, if appropriate, apply for an incidental take permit under the ESA. ESA incidental take permits also constitute Eagle Act permits as provided by 50 CFR 22.11(a). With regard to (2), if the project was already permitted under the Eagle Act, and the eagle was then listed under the ESA, the permittee would not need additional authorization under the ESA because § 22.11(b) provides that a permit is not needed under ESA regulations if the activity has been permitted under Eagle Act regulations. In response to (3), a section 7 consultation would be required at the time the eagle was listed under the ESA if there was an ongoing Federal action that affects the species. Many wind projects are currently obtaining ESA incidental take authorization for listed species under section 7 consultations. If the Service were to list golden or bald eagles under the ESA, project operators could seek similar coverage for listed eagles.

Comment: The 30-year permit tenure shifts the burden to the Service to show that additional mitigation measures are necessary. The criteria for renewal of a permit (which an applicant must demonstrate) are more stringent and thorough than criteria for amendment or suspension (which the Service must demonstrate). To renew a permit, the applicant must show that it has incorporated the latest scientific and technological information into its activities and that take continues to be unavoidable, whereas, under the proposed rule, no changes will be made to permitted activities unless the Service is able to demonstrate such changes are necessary to safeguard eagle populations. For 5-year permits, the project proponent, who has the resources to gather the necessary information and a critical need to do so, is charged with regularly gathering and presenting that information in order to secure permit renewal. Under a 30-year permit, inertia, scarce resources, and the press of other work may mean that the permit stands unexamined or is cursorily reviewed.

Response: The Service has determined that, by incorporating adaptive management elements into permits and conducting 5-year reviews, the agency can effectively manage the permits in a manner that will offset detrimental impacts to eagles throughout the life of the permit. To offset the use of agency resources, the Service will collect a permit administration fee of $2,600 for each 5-year review.

Comment: The Service should consider creating a ''provisional permit'' that could be issued for the 30-year period, with concurrent full permits issued for 5-year periods therein. This could provide a somewhat streamlined process for full permit renewal at 5-year intervals, but would require thorough review of permit conditions with respect to current population levels, mortality rates, and cumulative impacts. The burden of proof would remain with the permittee to prove that the project meets the criteria for renewal.

Response: We considered this idea, but rejected it because it would require significant additional resources for the Service and it would not provide project developers the certainty provided by a permit for the anticipated project life. By implementing the comprehensive adaptive management program described in this final rule, the Service can work with project operators to manage their activities in ways that meet our eagle conservation mandates.

Comment: A 30-year permit would decrease opportunities for public stakeholder involvement because decisions on issuance and reissuance are subject to NEPA analysis and tribal consultation.

Response: Leaving the 5-year maximum permit term in place would have allowed for additional public and Tribal comment during the NEPA process for each of the multiple permit applications the Service would have evaluated for an activity expected to last decades. However, the NEPA analysis that we will undertake before issuing a longer-term permit will thoroughly analyze long-term effects of such permits with input from the public. One of the central objectives of this regulation is to provide more certainty to project developers for the operational life of a project. With the inclusion of the 5-year review provision, we believe this final regulation strikes a good balance between providing that certainty and ensuring that eagles continue to be protected as they are under shorter-term permits.

Comment: A 30-year permit is not necessary for long-term wind energy projects because the timeframe of investment and financing for wind energy projects is relatively short. The Service does not cite any documentation that the 5-year permit is incompatible with development of renewable energy.

Response: Wind developers have informed the DOI and the Service that 5-year permits have inhibited their ability to obtain financing, and we changed the regulations to accommodate that need while protecting eagles. Moreover, we may issue permits with shorter terms than the allowable 30-year maximum tenure, when appropriate.

Comment: Extended permit tenure should occur only if the total amount of authorized take remains the same as it would be under 5-year permits.

Response: Because long-term permits will be for projects that will be operational for more than 5 years, we assume this commenter meant that a 30-year permit should not authorize more take than would be authorized under a series of 5-year permits. The adaptive management elements that will be built into permits, along with our 5-year evaluations, will ensure that the total amount of authorized take will remain the same under the extended permit tenure as it would be under a series of 5-year permits and will remain compatible with the preservation of eagles.

Comment: If additional conservation measures in the 30 years a permit is valid would be required as frequently as permit changes would be required upon renewal of 5-year permits—that is, if the 30-year permits will be as effective in the requirement to protect eagles—then moving to 30-year permits provides industry with no greater certainty.

Response: The final regulations strike a balance between providing certainty to project proponents by extending permits to up to 30 years, and ensuring that the Service maintains the oversight and tools it would have at its disposal to protect eagles with a series of 5-year reviews of permits.

Comment: A 30-year permit tenure (along with permit transferability to new owners) will weaken the Service's ability to investigate and prosecute

violations because each subsequent owner (and new permittee) will enjoy a grace period before any action is taken.

Response: We have long encouraged industries to employ ''best practices'' aimed at minimizing and avoiding the unpermitted take of protected eagles and other migratory birds. Each investigation presents unique factual and evidentiary factors. Therefore, this regulation is consistent with the general Service policy of providing notice, encouraging compliance, and offering an opportunity to correct before pursuing charges against a permittee. Service agents refer for prosecution in instances of takes that occur after the responsible party becomes aware of the condition or practice causing the take and fails to remedy it. Unless a notice would compromise an investigation, the Service notifies the company or individual of the issue(s) relating to the take of eagles and provides the company or individual an opportunity to take remedial action to halt and/or minimize the take. Where possible, we work with the company or individual to facilitate communication of appropriate guidance to help eliminate any future take of eagles. We also document the relevant actions taken, or not taken, by the company or individual following notice.

Comment: A 30-year permit tenure will not be long enough for some wind facilities. The Service should state that the permit renewal should be—just like ESA section 10 permits—automatic.

Response: Permit renewal for ESA section 10 permits is not automatic. Renewal of a permit is an issuance of a new permit, and all issuance criteria must be met. We believe the 30-year permit tenure will provide sufficient long-term certainty for project proponents (who will have the option of renewing their permits as long as the projects continue to meet permit issuance criteria).

Comment: Many utilities have maintained long-term Avian Protection Plans (''APPs'') that proactively address concerns relating to avian mortality. Implementation of APPs has been advantageous, allowing for a cooperative model to address concerns, rather than through a more rigid permitting scheme that adds cost to avian protection activities. If necessary, the Service could issue Letters of Authorization for take at facilities with APPs. It is important to ensure that development and implementation of APPs remains a viable option to address the same concerns that a 30-year programmatic permit would address.

Response: An Avian Protection Plan (APP) is a voluntary good-faith effort to protect and conserve migratory birds, including eagles, by reducing the risk of and damage from avian interactions with power lines, wind turbines, or other infrastructure. APPs are developed by companies, sometimes in consultation with the Service or other government agencies. They are designed to target the risks that are present at the particular utility or infrastructure. APPs focus on preventing avian mortality by identifying areas of high bird use and establishing protocols for retrofitting equipment and/or modifying operations to protect avian species. The plans include monitoring and reporting protocols for documenting avian interactions for purposes of adaptive management and further reduction of hazards to birds.

Lower risk to birds generally correlates with greater reliability for the operations of the utility or other facility. By reducing avian mortalities, implementation of APPs also will reduce the facility's liability under the MBTA and the Eagle Act. For all those reasons, the Service strongly encourages development of APPs. However, an APP is not an authorization for any take that still occurs despite the APP. In most cases, facilities that are operating under well-designed APPs should find the eagle take permitting process more expedient. They also will generally need to implement fewer additional conservation measures as permit conditions.

Comment: There is language in the proposal that a permit is not necessary if there will be no impact; however, ''if any take will occur, a permit is necessary.'' This language suggests that all forms of existing and future eagle take will require permits.

Response: Take of bald and golden eagles is illegal under the Migratory Bird Treaty Act and the Eagle Act. To remove liability for take under both statutes, a permit is needed. The language referenced by the commenter reads: ''If there will be no impact, a permit is not necessary or appropriate. However, if any take will occur, a permit is necessary to avoid violating the Eagle Act and developers and operators of small-impact projects may wish to seek the coverage provided by a programmatic permit . . .''

Comment: Eagle take permits should be required before construction for all projects located in eagle habitat. Existing facilities should be required to apply for take permits, share existing data, and begin surveys using similar protocols as newly permitted facilities.

Response: The Eagle Act does not directly regulate otherwise legal activities that may result in the take of an eagle. Certain effects of otherwise lawful activities, such as construction and operation of wind facilities, can result in actions that are prohibited under the Eagle Act, such as disturbance, injury, or killing of eagles. Accordingly, eagle take permits do not authorize construction or operation of a facility, per se, and are not required to construct or operate such facilities. What the permit authorizes is eagle take that may result from the construction or operation. It is the responsibility—and choice—of the developer, operator, or landowner to seek a permit and avoid liability for such take. However the Service encourages all entities with a project that has a potential to incidentally take eagles to obtain an eagle take permit prior to undertaking activities that could result in such takes.

Comment: The Service should make long-term permits available to existing facilities that began operations prior to 2009, even though opportunities for avoiding take are more limited. These facilities represent an opportunity to explore post-construction avoidance, minimization, and mitigation techniques.

Response: Eagle take permits are available to facilities that were operating prior to 2009. We anticipated that many such facilities would seek and obtain these permits. To date, the Service has received few eagle take permit applications from operating wind energy facilities.

We stated in the 2009 final rule implementing the regulation (74 FR 46836) that, because the requirements for obtaining programmatic take authorization are intended to reduce take, the take authorized by programmatic permits for activities ongoing prior to 2009 will neither be subtracted from regional thresholds, nor will it be subject to the prioritization criteria. The reductions in take that result from implementation of new measures to reduce take from ongoing activities under programmatic permits may allow the Service to increase take thresholds and make additional permits available for other activities likely to result in take.

Comment: Extension of permits for industry to 30 years prioritizes commercial activities over tribal cultural and religious needs because it will allow industry to take a larger, disproportionate number of eagles, while tribal members will be subject to the same limits imposed by the existing permit system. Issuing 30-year programmatic permits could de facto change the priority order for who should receive eagle take permits established by the 2009 regulations.

Response: In the ''eagle take rule'' (50 CFR 22.26(4)), the Service identified a priority order for eagles available to be taken under permit as (in priority order): (1) Safety emergencies; (2) Native American religious use for rites and ceremonies that require eagles be taken from the wild; (3) renewal of programmatic take permits; (4) nonemergency activities necessary to ensure public health and safety; and (5) other interests. Under the eagle take rule, before we issue a permit we must find that issuance of the permit will not preclude issuance of another permit for an interest of higher priority. On a regional scale, issuance of 30-year permits should not change the availability of eagles for higher priorities, such as Native American religious use. Each long-term permit must meet the criterion that it is compatible with the goal of maintaining stable or increasing breeding populations of both species of eagles. Therefore, these long-term permits will not decrease eagle populations within eagle management units, and requests from higher priority applicants should not be affected.

Comment: Will 30-year permittees be required to comply with new laws or regulations that might be put into effect during the permit tenure?

Response: Unless laws or regulations contain provisions excluding certain persons or organizations, the provisions of such laws and regulations apply to all.

Comment: The regulations should restrict permits for long-term, industrial-scale projects to applicants who have conducted comprehensive pre-construction monitoring using rigorous methods endorsed by the Service.

Response: The regulations do not specify the precise methods applicants must use to conduct pre-construction monitoring. However, for purposes of wind energy development, the Service has developed the voluntary Wind Energy Guidelines and Eagle Conservation Plan Guidance, both of which provide detailed guidance on monitoring methods and data that would be useful to assess risk of project operations to eagles, other migratory birds, and wildlife. Much of this guidance would be applicable for other industries as well. Permit applicants do not have to follow this guidance, but their data should meet an equal level of rigor to allow us to assess impacts on eagles.

Mitigation and Adaptive Management

Comment: The Service is on record stating that it knows of no measures to reduce take at wind energy facilities (once sited and operational). The only proven method to reduce mortalities is to remove or decommission turbines. Therefore, what mitigation measures can the Service actually incorporate as conditions for adaptive management under these permits? Any measures to reduce take that are demonstrably effective should be required already as conditions of a programmatic take permit, and should not be classified as ''additional.''

Response: The preamble to the 2009 permit regulations envisioned the Service and industry working together to identify and evaluate possible ACPs. The process of ACP development for wind-energy facilities has been hampered because there has been little standardized scientific study of potential ACPs. Such information can best be obtained through experimental application of ACPs at operating facilities with eagle take permits. Considering the pressing need to develop ACPs for wind-energy facilities, the Service believes that the best course of action is to work with industry to develop ACPs for wind projects as part of the programmatic take permit process. Under this scenario, a project developer or operator will still be expected to implement any reasonable avoidance and minimization measures that may reduce take of eagles at a project. However, the Service and the project developer or operator will discuss and agree on other site-specific, and possibly turbine-specific, factors that may pose risks to eagles and potential future ACPs that might reduce or eliminate those risks. Unless the Service determines that there is a reasonable scientific basis to implement prospective ACPs up front, potentially costly measures may be deferred until such time as there is eagle take at the facility and the circumstances and evidence surrounding instances of take or risk of take suggest the prospective ACPs are warranted. This agreement would be specified as a condition of the programmatic eagle take permit.

If eagle take is confirmed through post-construction monitoring, developers or operators would be expected to implement the potentially effective experimental ACP(s) and to monitor future eagle take relative to the ACP(s) as part of the adaptive management process. As the results from monitoring experimental ACPs across a number of facilities accumulate and are analyzed as part of the adaptive management process, scientific information in support of certain ACPs may accrue, whereas other ACPs may show little value in reducing take. If the Service determines that the available science demonstrates an experimental ACP is effective in reducing eagle take, the Service will approve that ACP and require its implementation when and where warranted.

Comment: The regulations need to be much clearer about when adaptive management measures will be required; the proposed rule states that the permittee will be required to undertake additional measures in the event that take exceeds predicted levels or if new information indicates that such measures are necessary to protect eagles. Trigger mechanisms and mid-course changes must be unambiguously identified prior to permit issuance. Will additional measures be required of project proponents to address unforeseen circumstances? Will permittees be required to implement measures that were not considered at the outset and, therefore, were not specifically included as conditions of the permit?

Response: See our response to the previous comment. Also, the triggers that would initiate operational response will be described in each permit. The triggers will be project specific, and should address potential risks associated with the project. Triggers may include exceeding a set number of eagle fatalities, eagle use exceeding a set threshold, fatalities confirmed at a particular turbine or set of turbines identified as potentially risky, occupancy of a particular eagle nest site, or other measures.

Comment: Adaptive management must be ''active adaptive management.'' Experimental variation in technology would need to be required at the outset. The trigger for implementing additional measures cannot depend on evidence of the effectiveness of the measures, since that evidence has not yet been collected. In order to comply with the regulations for programmatic permits, which require take to be unavoidable, the Service must be able to require implementation of new technologies that become available during the life of the permit.

Response: As a general matter, we do not agree that project developers should be required to undertake experimental measures when the efficacy of such measures has not been demonstrated. However, Section 22.26(h)(2) of this regulation provides that the Service may, as part of the 5-year review process, require that permittees implement ''additional conservation measures as described in the permit.'' Thus, the Service has the discretion to condition permits to require implementation of ACPs that become available during the life of the permit.

In addition, if the Service determines that the available science demonstrates an experimental ACP is effective in reducing eagle take, the Service will approve that ACP and require its implementation upfront on new projects if warranted.

Comment: The rule does not provide sufficient predictability for wind developers because it does not contain ''No Surprises'' assurances. Any additional mitigation measures that may be required must be specifically identified up-front as permit conditions. Requiring the best-available techniques is too stringent, as these may be overly complex, costly, and untested. If measures cannot be specifically pre-defined, there needs to be a cost cap above which developers will not have to pay. The proposed rule would provide permit holders with no assurances that unanticipated, overly burdensome mitigation measures will not be placed on them or that the authorized level of take will be reduced whenever the Service deems that new scientific information calls for additional conservation measures. The lack of cost certainty throughout the life of the permit will significantly impact the wind energy industry. Without ''No Surprises'' assurances, potential investors will be very conservative in their assumptions, thereby inhibiting funding.

Response: Provision of ''No Surprises'' assurances is beyond the scope of this rulemaking. However the adaptive management process is intended to remove the possibility of any surprises by clarifying where and when additional measures would apply and what factors would trigger these measures. Under the Eagle Act, permits must be compatible with eagle preservation. If eagle populations decline because of cumulative take or other environmental causes, we believe that a single permittee should not bear the cost of all additional conservation measures and/or reductions in authorized take that may be needed to stabilize the eagle population; additional actions and costs would be proportionately dispersed among permittees depending on the degree to which their activities impact eagles within the eagle management unit.

Comment: Language used in the proposed rule indicates that the U.S. Fish and Wildlife Service can alter the terms of the permit at its discretion or revoke the permit if the activity is not compatible with the preservation of the eagle. The language seems to indicate a decline in eagle populations could cause the Service to alter or revoke a permit even if the permittee was following all stipulations of the permit. How does this provide an incentive to a utility to obtain a take permit and invest in additional protection or mitigation programs?

Response: The comment refers to the Service's regulatory authority under the general permit regulations at 50 CFR Part 13. This authority applies to all wildlife permits issued by the Service. Through the Eagle Act, Congress provided the authority for the Service to issue take permits for eagles, but only when they are compatible with the preservation of the bald eagle and the golden eagle. We interpret this to mean that the permit must adequately protect eagles throughout the duration of the permit, and not just on the day the permit is issued. The general permit regulations provide one avenue for the Service to ensure adequate protection of eagles through the full term of each permit.

Comment: It is unlikely that additional mitigation measures could provide enough specificity to reduce uncertainty with respect to the proponent's cost while still incorporating meaningful adaptive management.

Response: We recognize the challenge in striking a balance between providing certainty to project proponents and protecting eagles. However, we do not agree that the provisions being promulgated in this rule create or increase the difficulty in reconciling the two objectives. Whether permits are issued for 5-year terms and then renewed (or not renewed), or the permits are issued for up to 30 years but reviewed every 5 years, the tension between providing proponents of longer-term projects certainty and protecting eagles would exist.

Comment: Additional mitigation measures should be required only if an eagle population is declining at the national, rather than at the local or regional level, since smaller populations are inherently more vulnerable than the entire species.

Response: On the basis of the analysis conducted in the final environmental assessment supporting promulgation of the 2009 eagle permit rule, we committed to managing eagles under all eagle permits at the scale of the regional eagle management units. Even at this scale, several State fish and wildlife agencies expressed concern about the possibility of harming eagle populations at finer scales. Accordingly, we will continue to assess the effects of our permits on eagle populations at regional and local-area population scales.

Comment: Adaptive management should be designed to respond to environmental and demographic changes at the population, subpopulation, and metapopulation scales.

Response: We agree and intend to use adaptive management to respond to changes at each of these scales, to the degree we can detect changes.

Comment: With Federal budgets in decline, it seems doubtful the Service will have the staff, tools, mechanisms, and resources needed to implement adaptive management.

Response: The Service and other Federal agencies face challenges in carrying out their missions in the face of shrinking budgets. However, the eagle conservation and permitting program is a Service priority. Accordingly, the Service based our revised fee schedule on our estimate of staff time necessary to process permit applications, review monitor reports, and engage in adaptive management discussions.

Comment: The current level of oversight the Service anticipates performing for long-term permits is grossly insufficient. The Service estimates that only 35 hours of agency time would be needed to visit facilities and evaluate impacts of permitted activities over 30 years.

Response: The estimate for post-issuance oversight for each 30-year permit, which we published in our proposed rule, is not 35 hours. That was the estimate for the average amount of time we expect to spend on site visits (not including potential law enforcement investigations). In addition to potential site visits, which we do not expect will be required for many permits, our estimate also includes an additional estimated 140 hours to monitor annual reports and an additional 76 hours to evaluate impacts for purposes of implementation of adaptive management measures.

Comment: Compensatory mitigation should be required only for actual, rather than predicted take, and thus should be assessed only as take occurs. There is evidence that eagles may be able to learn to avoid turbine blades; thus by calculating the risk of eagle take through a formula that does not account for eagle avoidance of blades, and then requiring compensatory mitigation to completely offset that level of assumed take, the Service sets the compensatory mitigation level too high and requires compensation for ''phantom'' take that may never occur. There should be a process for refunding or crediting compensatory mitigation funds if the actual take is less than predicted.

Response: We will assess compensatory mitigation in 5-year increments, regardless of permit tenure.

At the end of the first 5-year period, actual take will be compared with predicted take, and if actual take is different, adjustments may be made. One adjustment could be using the actual fatality rate to update the predicted fatality rate for future years.

We are not aware of published evidence that eagles learn to avoid turbine blades, but if such learning occurs it should be apparent in lower-than-predicted fatality rates over time. As such, this behavior would likely be accounted for in the adjustments between predicted and observed fatality rates for each permitted project.

Comment: It is unclear to what degree the status of an eagle population will be attributed to the take associated with a given project.

Response: The Service is working with the U.S. Geological Survey (USGS) to refine and improve population models for eagles that will better enable us to model and predict effects of authorized take on eagle populations. We do not anticipate being able to directly detect population-level responses to individual projects because it is not currently feasible to monitor eagle populations at such a fine scale. However, with monitoring and assessment of cumulative impacts, we may be able to better predict the effects of authorized take.

Comment: If changes to the permit terms and conditions are expected by the Service during the pendency of the permit, the permittee should be provided as much advance notice as possible to plan and budget for potential changes in mitigation requirements. Periodic meetings (e.g., annually) between the permittee and the Service would be appropriate to ensure that both parties are informed on any potential issues or concerns.

Response: The Service will make a good faith effort to keep permittees informed of factors that may affect their permits.

Comment: All mitigation measures should be independently monitored to ensure they are successful.

Response: As far as onsite mitigation, intensive, targeted monitoring will be required when necessary to determine the effectiveness of conservation measures and ACPs implemented to reduce observed fatalities. For offsite mitigation, the Service does not have the resources to monitor all mitigation measures or the budget to hire a third party to do so. However, we will evaluate a large enough sample to ensure that such measures produce the expected outcomes.

Comment: The Service should consider developing some form of partnership or other mechanism to facilitate the pooled mitigation needs of project developers and to support the ongoing research that will be necessary to test mitigation techniques and verify their utility.

Response: We are open to considering partnerships and other mechanisms to identify efficiencies for mitigation at specific projects, explore opportunities to achieve large-scale eagle habitat conservation, and support additional research into mitigation techniques. Also, because permittees will be required to monitor and report the effectiveness of experimental mitigation techniques, the permit program itself is an opportunity to test such measures.

Rulemaking Process

Comment: The decisions on issues set forth in the ANPR that was published concurrently with the proposed rule to extend permit tenure are prerequisites to any decision on permit duration and should be addressed concurrently.

Response: We agree that many of the issues addressed in the two rulemaking initiatives are closely related. However, we believe the issue of extending the permit duration is sufficiently independent from and more time sensitive than the issues highlighted in the ANPR to move forward with this final rule at this time. Further, the extension of the permit duration provides more certainty to developers of clean energy projects. We intend to revisit the issues addressed in the ANPR in a future proposed rule.

Comment: Making this rule change without tribal consultation, as is described by the **Federal Register** notice, contradicts the Department of the Interior's renewed commitment to consultation as set forth in new DOI guidance.

Response: This is a technical amendment to our regulations. It merely extends the approved duration of a permit from 5 to 30 years. The Service has recently invited tribes across the Nation to consult with us on several eagle conservation and management matters including possible additional, substantive revisions to the 2009 eagle rule. We will also invite consultation with any tribes that may be directly affected by individual permit applications

Comment: Traditional Ecological Knowledge (TEK) about eagles should have been sought. Tribes have unique insights into ecosystem management and have worked in partnership with the Service in the past to ensure that TEK is incorporated into management plans, including for threatened and endangered species, forests, fisheries, range, and fire management. Incorporation of TEK has ensured that land management policies do not jeopardize species habitat and the continued existence, preservation, and recovery of endangered and threatened species.

Response: We will consult with tribes and seek TEK on individual projects as appropriate.

Comment: The Service should more closely involve the States in the planning process rather than listening only to the permitted public. Wildlife management in many States is heavily affected by the regulatory actions of the Service.

Response: We will coordinate with States in both the revision of the eagle rule and on individual project applications. States are also welcome to provide comments during the public comment period for any of our proposed rules.

NEPA

Comment: When an agency decides to apply a categorical exclusion and foregoes preparation of an environmental assessment (EA) or environmental impact statement (EIS), it is required under NEPA to adequately explain its decision, but the Service has not done so.

Response: We believe that the determination to apply a categorical exclusion to this administrative action was adequately explained in the proposed rule. The basis for applying the categorical exclusion is explained in further detail in the Required Determinations section of this final rule and in our responses to additional NEPA-related comments below.

Comment: The proposed rule changes are more than ''administrative'' in nature and so do not fall under the NEPA categorical exclusion invoked by the Service. Real, significant, and cumulative biological impacts will result if the proposed regulatory changes are implemented.

Response: We received several requests for clarification from commenters regarding our reliance upon the Department of the Interior categorical exclusion, 43 CFR 46.210(i), and have revised our explanation in light of these comments. Our revised explanation is presented here, as well as below in the Required Determinations section. First, the categorical exclusion upon which we are relying excludes from further NEPA analysis ''Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to

lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively, or case-by-case.'' The provisions of this rule are administrative or financial in nature, and therefore, subject to the first part of this categorical exclusion. For instance, the implementation of a new fee schedule, the adjustments to the permit transfer and right of succession requirements, and the reduction of the administrative burdens and duplication of effort represented by the extension of permit duration to a possible 30-years, instead of the current 5-year limit, under which proponents of longer-term projects must apply for, and the FWS review permits more frequently.

More importantly, however, the extension of the allowable permit duration from 5 to 30 years is subject to the second part of this categorical exclusion because it will be broadly implemented. Issuance of a permit of whatever duration for take of eagles requires compliance with NEPA. Extending the permit tenure from 5 years to 30 years will not cause environmental effects that lend themselves to meaningful analysis; instead, the effects of the permit tenure will be addressed on a case-by-case basis. A 50 CFR 22.26 eagle permit must contain permit conditions and be supported by an appropriate NEPA analysis that ensure the underlying project or action will continue to meet regulatory requirements, and that any take meets the Eagle Act's preservation standard throughout the entire duration of the permit, whether it is 5 years or 30 years. A permit with a duration of 30 years is, thus, likely to contain more conditions than a permit with a duration of 5 years to ensure continued compliance over the longer time span, including conditions that incorporate adaptive management principles, and be supported by appropriate NEPA analysis in the context of adaptive management as directed by 43 CFR 46.145 to account for reasonably anticipated changed circumstances. Additional conditions may include specific mitigation measures, possibly including additional compensatory mitigation requirements, that are triggered if actual take caused by the project exceeds anticipated take or to account for a reduction in local or regional eagle populations. Moreover, if such conditions prove inadequate at any time, the Service is authorized to amend permits as necessary under both paragraph (c)(7) of 50 CFR 22.26—establishing that the Service may amend and even revoke permits as necessary to safeguard eagle populations—and paragraph (b) of general permit regulation 50 CFR 13.23, under which the Service may amend a permit for just cause at any time upon a written finding of necessity.

Finally, pursuant to 43 CFR 46.205(c), we have reviewed our reliance upon this categorical exclusion against the Department of the Interior's list of extraordinary circumstances (reproduced at 43 CFR 46.215), and find that none apply to this rule.

Comment: The Finding of No Significant Impact (FONSI) associated with the 2009 final rule committed the Service to measures to mitigate and/or minimize potential adverse effects of the 2009 permit regulations, enabling FWS to determine that the action was not a major Federal action that would significantly affect the quality of the human environment, and to avoid development of an EIS at that time. However, most of the commitments made in the mitigated FONSI have yet to be undertaken. The need for an EIS was also mitigated, according to the FONSI, by the Service's establishment of conservative limits on eagle permit issuance until additional data was available as well as to provide issuance of permits for take resulting in mortality for two reasons: (1) ''to reduce the ongoing occurrences of unauthorized and unregulated mortality contributing to eagle losses'' and (2) ''to reduce long-term risk of take.'' Furthermore, the 2009 final EA did not envision or address numerous prospective permits authorizing activities causing ongoing and sustained eagle mortality—such as wind development—but rather were attempting to address historical take from unregulated entities. Extending the permit tenure to 30 years without undergoing a new, comprehensive NEPA analysis, much less carrying out the commitments made in the 2009 FONSI, is not in accordance with NEPA.

Response: As stated above, this rulemaking primarily alters the maximum permit duration from 5 years to 30 years, a change that is primarily administrative in nature and not anticipated to result in more than minimal environmental impacts. The conservative take thresholds applied to eagle permits will continue as nothing in this rulemaking affects either the conservation standards in the 2009 rule or the 2009 EA supporting it.

Environmental impacts of activities on local or regional eagle populations will be addressed in the NEPA analysis of direct, indirect, and cumulative impacts for each permitted project.

Comment: The NEPA provides that certain extraordinary circumstances prevent agencies from categorically excluding actions, and four different extraordinary circumstances as set forth in the NEPA regulations apply in this case.

- There are potentially significant effects on future protection of important natural and cultural resources and migratory birds (43 CFR 46.215(b)).
- Highly controversial effects (43 CFR 46.215(c)).
- Highly uncertain and potentially significant effects becoming more uncertain further into the future (43 CFR 46.215(d)).
- A decision in principle with potentially significant effects (43 CFR 46.215(e)).

Response: As explained above, the Service has reviewed our reliance upon this categorical exclusion against DOI's list of extraordinary circumstances, at 43 CFR 46.215. We have found that none apply to this final rule. The NEPA compliance conducted in support of any permit issuance will also address the topics highlighted in the extraordinary circumstances cited by the commenter.

Comment: The lack of reliable scientific data on golden eagle populations warrants an analysis under NEPA.

Response: The 2009 EA acknowledged the lack of reliable scientific data on golden eagle populations and set conservative regional thresholds for annual permitted take of eagles in light of that lack of reliable data. The Service anticipates that scientific data quality on eagle population dynamics will continue to improve and any new information and data will be considered during the NEPA review for future permit determinations.

Comment: Separate, comprehensive regulations should be developed for wind power along with a robust NEPA process. In the meantime, until such NEPA analysis is conducted, programmatic permits for wind energy facilities should be considered interim measures and the 5-year tenure limit should be retained.

Response: Development of comprehensive regulations governing wind power development and operations is beyond the Service's authority. The Service has the authority under BGEPA to authorize take of eagles in the course of otherwise legal activities. The Service may develop eagle permit regulations specifically tailored to wind-energy projects in the future. If the Service chooses to develop such regulations, it will comply with NEPA at that time and review the anticipated impacts of such regulations.

Comment: The cost and time associated with conducting a NEPA

analysis for each individual permit may be excessive, particularly when combined with the up-front permit application and advance payment of administrative fees. Other permits issued by the Service do not require NEPA review without typical NEPA-triggering criteria. The Service should consider conducting a programmatic NEPA review of the permit process rather than each permit individually.

Response: We conducted a general NEPA review of the permit process in 2009 when we first issued new regulations authorizing incidental take of eagles, and established thresholds for permit issuance. That NEPA analysis presented a general environmental review of the impacts of issuing permits under all the Service's eagle permit regulations, including the permits authorized by the 2009 regulations. The purposes of NEPA may be better served when the impacts of, and alternatives to, specific activities authorized by permits are considered and analyzed individually at the appropriate time.

Fees—Application Processing and Administrative

Comment: There should be no permit application and administration fees. To the extent that the Service has either a mandatory or discretionary duty to issue incidental take permits, the Service should seek Congressional appropriations to support those regulatory functions.

Response: Issuance of incidental take permits is a discretionary function for the Service. Permits are special services with benefits that apply to specific individuals or companies (the permittees). Both Congress and OMB have directed Federal agencies to recoup the costs of permit issuance and other special services directly from the recipients of those permits and other services, not through appropriations, to prevent American taxpayers from having to bear those costs.

Comment: The administration fee should not be fixed because the costs are certain to increase significantly over 30 years.

Response: Costs are likely to rise, so the administration fee may not always recoup Service expenditures. However, we cannot predict exactly how much costs will increase. Allowing for a ''floating'' fee would be difficult to administer and could increase administrative costs. Also, a fixed fee provides more certainty to permittees.

Comment: An initial smaller fee should be paid upon submission of the permit application with the entire fee being paid if the permit is approved.

Response: The purpose of the application processing fee is to cover the costs to the Service for resources and staff time needed to review the application. The cost should, as much as possible, be borne by the applicant, not the taxpayer. For that reason, the fee is designed to capture the full anticipated cost of reviewing the application, including providing technical assistance prior to submittal of the application. Those costs are not necessarily higher if the application is approved and a permit is issued.

Comment: The entire administration fee should be collected at the time the permit is issued.

Response: We intend to collect the administration fee for each 5-year interval every 5 years, as we evaluate and certify permits. This will eliminate the need to refund portions of an administrative fee if a project stops operations or if a permit is suspended or revoked.

Comment: Fees should be at least partially refunded if a permit is revoked.

Response: See the two previous responses.

Comment: For some permit applicants, the initial permit fee may create a financial burden that could be alleviated by spreading payments in installments over multiple years.

Response: What the commenter refers to as a permit fee is actually a permit application processing fee. Because it is intended to cover the cost of providing both technical assistance leading up to an application being submitted and the review of the application, we need to collect the fee when the application is filed.

Comment: The large fee, in combination with uncertainty about what will be required, is likely to be a deterrent to applying for a permit. There have been no prosecutions of wind companies for taking eagles; if there are no consequences for taking eagles, and the application fees will dramatically increase, why will companies suddenly apply for permits?

Response: Wind energy companies are not exempt from the Eagle Act or MBTA prohibitions against take. Though there have been no prosecutions of wind companies for take of eagles, investigations are ongoing.

Comment: The Service needs to propose the definition of ''small impact'' for public notice and comment before finalizing it. Further, the definition of small impact needs to be clearly defined and quantified in regulation in terms of eagle take numbers, project size, risk category, or other relevant criteria to ensure applicants are fully advised regarding the costs of permit applications as well as to avoid future conflicts over what permits qualify for the lower fee.

Response: Proposing a specific definition may have been helpful for generating comment. We received no input during the public comment period that would help to define ''small impact.'' Moreover, because the term ''small impact'' was confusing, we have replaced it with ''low-risk.'' In the preamble, we clarify that the ''low-risk'' category is designed to substantially reduce permit application processing fees for projects that we can identify, without committing substantial staff resources, as likely to have minimal or no impacts to eagles even though take is possible over the lifetime of the project.

Comment: It is unclear whether the size standards established by the Small Business Administration (SBA) will be the basis for assessing small-impact projects.

Response: No, the SBA size standards are based on a variety of factors, none of which impacts eagles. The idea behind our proposed ''small impact'' project category—now called ''low-risk''—is to reduce permit application processing fees for projects that we can identify without committing substantial staff resources, as likely to have minimal or no impacts to eagles even though take is possible over the lifetime of the project.

Comment: Small projects can have large impacts, particularly cumulatively. Application of a category for small-impact projects, unless carefully administered, would reduce the Service's oversight and ability to assess cumulative impacts, and could be used to avoid appropriate conservation measures.

Response: We agree that is important to have a sound basis for categorizing some projects as small impact to reduce the possibility that such projects take more eagles than anticipated or have large impacts cumulatively. Accordingly, the definition of ''low-risk'' that we are adopting is based on the magnitude of impacts to eagles, and the existence of sound predictive tools to estimate the impacts.

Comment: ''Small impact'' projects should be subject to administration fees so the Service will have oversight to ensure the projects are not having greater impacts than anticipated.

Response: We agree with this comment. Because ''low-risk'' permits will require some monitoring and reporting, there will be costs to the Service as we review the reports. We expect that most low-risk projects will not take any eagles, but in rare cases

when take occurs, there may be a need to assess potential measures a permittee can take to further reduce the likelihood of additional take. To cover what we anticipate to be typical post-issuance costs to the Service, holders of low-risk permits will be assessed an administration fee of $500 every 5 years.

Comment: Fees collected should be used to increase enforcement of Eagle Act violations.

Comment: Some of the fees should be allocated to the States to help them defray the costs of surveys and monitoring they do that the Service relies on. If there are unused funds (e.g., if a project does not continue for the duration of the original permit tenure), they should be banked and distributed to States.

Comment: The Service should consider the cost/benefit of transferring some of the permit administrative costs to on-the-ground mitigation, particularly for industries that may not be able to front-load the permit processing and administrative fees.

Response: The Service's Office of Law Enforcement is funded independently of the Migratory Bird Program, which promulgates and administers Eagle Act permits and regulations. To recover the cost of administering these permits, the Migratory Bird Program will need to retain the full amount of the permit application processing fee. The fees cannot be distributed to the States or used for mitigation.

Comment: The Service should clarify whether the intent of the fee structure is to require a permit for multiple facilities in a project or whether each individual facility, regardless of whether it is developed or owned by the same entity, is required to obtain a permit. A combined permit for utilities that have multiple facilities or large service territories would minimize the workload and cost for FWS by avoiding multiple applications from the same company for different projects and would streamline reporting and permit administration under one permit. It also would afford protection to eagles and other migratory birds across a larger geographic area.

Response: Permits will normally be required for individual facilities that are likely to take eagles. Different projects in different locations would require different (additional) analyses.

Comment: Fees should be structured to cover the Service's costs of monitoring and compliance for *the life of the project.* As proposed, the fees appear to be too low to enable the Service to adequately monitor or enforce the permits. A comprehensive cost analysis should be prepared by the agency.

Response: We will observe how the program operates once long-term permits are issued and monitoring begins. If the fees prove to be inadequate, we can revise them in a future rulemaking.

Comment: The Service should consider using cost reimbursement agreements in lieu of an application fee. These mechanisms, which are frequently used for development of environmental analyses under NEPA and right-of-way and special use authorizations on public lands, can more closely track the actual cost of processing permit applications.

Response: As the program matures, and the actual costs of administering permits are demonstrated, a cost-reimbursement process can be considered.

Comment: Is the cost and time of the NEPA review covered in the cost of the application? If the NEPA cost is not covered in the application fee, can the FWS please address the anticipated additional costs in the economic analysis, including direct cost of NEPA review and associated costs of timing delays?

Response: The permit application processing fee is designed to cover the cost of NEPA review.

Transferability of Permits

Comment: The proposed language allowing permits to be transferred says that the Service will ''negotiate such permits if successive owners agree to the terms of the permit.'' The word ''negotiate'' implies that the Service may seek to impose additional restrictions via the terms of the permit as a condition of the transfer. This effectively reduces the value of the permit.

Response: The phrase the commenter is concerned about is not in the regulations, but only in the preamble. We did not intend it to imply that the transfer will introduce new opportunities to impose additional restrictions. We used the word consistent with the following definitions found in the Merriam-Webster Online Dictionary: ''to confer with another so as to arrive at the settlement of some matter;'' ''to deal with (some matter or affair that requires ability for its successful handling): manage.''

Comment: Permits should not be transferable. New owners of facilities should have to reapply and be approved through the same process the original owner traveled.

Response: The commenter did not give a reason why he or she believes permits should not be transferable if the successor is subject to the some terms and conditions as the original permittee. We also do not see a good argument against allowing transfer, and we see good reasons to allow it. Land and businesses frequently change hands. Requiring a new permit application at transfer would be overly burdensome to the parties involved, including the Service, without providing any conservation benefit to eagles.

Comment: The proposed regulations allow for a transfer of the permit to a new owner, and also allow an extension of the permit to anyone authorized to carry out the permittee's activities. The Department of the Interior compares this proposed arrangement to the right of transfer and extension afforded State and local governments, but private companies are not required to consider the public interests the way governments do, and should not be given the same powers.

Response: The provision being objected to in this comment (50 CFR 13.25(d)) pre-dates this rulemaking and applies to all permits issued by the Service. Without this provision every employee and volunteer at any permitted business or organization would have to obtain his or her own permit, which would be overly burdensome and unnecessary because the permitted business/organization is already responsible for ensuring employees and volunteers comply with the permit.

Comment: A potential conflict could arise between the responsibilities of the original permit holder and the successor based on the requirement that the ''successor . . . will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements.'' Placing the burden of outstanding minimization and mitigation requirements upon the successor may provide a disincentive for the original permit holder to complete all mitigation requirements. The permit holder should be responsible for all mitigation requirements incurred during the period of their ownership, and all mitigation requirements should be up to date as of the time of permit transfer.

Response: When the successor agrees to the terms of the original permit, he becomes responsible for implementing any outstanding mitigation requirements. Any disincentive the original permit holder may experience for carrying out the terms of his or her permit would likely be balanced by his

incentive to find a buyer willing to take on the permit and its outstanding legal obligations. We see no conservation benefit to requiring the responsibility to remain with the original permittee once a permit is transferred.

Comment: This proposed language lacks any reasonable specificity ensuring the successor or transferee permittee will be held accountable to the permit terms and conditions of the transferor. For permits to be transferable, there must be enforceable financial guarantees that permit conditions will be met by the permit holder. It is not enough for the Service to accept written assurances of ''sufficient funding'' without specifying what would constitute as qualifying written assurance. Also, the term ''written assurances'' is not only vague, but legally unenforceable and subject to arbitrary or inconsistent agency application.

Response: The participating parties will need to create appropriate legal instruments to allocate the rights and responsibilities of the transfer recipient(s), and we will review those documents for acceptability.

Post-Construction Monitoring

Comment: Each turbine must be closely monitored the first year in order to ensure monitoring and reporting is not ''selective.''

Response: The Service and USGS are conducting research into post-construction monitoring designs and will incorporate those findings into the requirements for such monitoring under permits. Our primary objectives are to ensure such monitoring is unbiased and provides meaningful estimates of actual fatalities, taking into consideration the anticipated risk of the project.

Comment: The permittee should provide funding to the Service to hire independent contractors to do the monitoring to ensure no bias. Self-monitoring is inherently unreliable. Permittees have a strong incentive to underreport. The Service will not have the resources to verify reporting unless the permittee is responsible for the cost.

Response: The Service relies on many permittees to self-monitor and self-report. We believe this is an effective way to collect information about project impacts to wildlife, including eagles. Failure to report required information could be a violation of a permit condition and result in revocation of the permit.

Comment: A standardized protocol for post-construction mortality monitoring should be required under long-term permits.

Response: Though there is no set protocol at present, USGS and the Service are further developing protocols as part of the adaptive management process under initial eagle take permits. The National Wind Coordinating Collaborative's comprehensive guide to studying wind energy-wildlife interactions provides a useful starting point to develop post-construction monitoring.

Comment: Under the current regulations at 50 CFR 22.26, post-construction monitoring may be required for up to 3 years. The duration of monitoring needs to be more flexible to account for the longer duration of projects.

Response: The regulations at 50 CFR 22.26(c) state that the Service may require post-construction monitoring and that permittees submit an annual report of such monitoring. For ongoing activities the monitoring may be required over the life of the activity or the term of the permit if long-term monitoring is necessary for adaptive management under the permit or if it is likely to provide data valuable for protecting eagles. The Service will make mortality information from annual monitoring reports submitted by permittees available to the public.

Comment: The permits should require wind facilities to allow government personnel access onsite to monitor for mortalities and verify that conservation measures are being implemented. Currently, many wind facilities deny anyone access and claim that their data are proprietary.

Response: All permits issued under § 22.26 allow ''Service personnel, or other qualified persons designated by the Service, access to the areas where eagles are likely to be affected, at any reasonable hour, and with reasonable notice from the Service, for purposes of monitoring eagles at the site(s)'' (§ 22.26(c)(4)). Per 50 CFR 13.47, Service Law Enforcement officers do not need to give notice for site visits.

Comment: Nest occupancy monitoring should be required for the life of the permit.

Response: We disagree. We expect that if there is a disturbance effect on proximate nesting eagles, that effect will be most likely during construction and initial operation of the facility.

Comment: The Service should develop a set of standard monitoring and reporting requirements with regard to potential impacts on eagles of transmission and distribution infrastructure to allow for effective planning and budgeting for utility projects. Permits for such projects should provide that monitoring may be terminated if no impacts have been identified or if impacts are likely to occur only over a certain period of time.

Response: Terminating monitoring altogether may not be prudent. Conditions change, and therefore the level of take may change. However, it seems reasonable that the frequency and/or extent of monitoring might be reduced after a period of time.

Comment: Proactive efforts by a utility to conduct surveys to identify high-risk electrocution areas for raptors will result in greater numbers of mortalities being discovered and reported. This greater effort would elevate numbers compared to years prior to surveys being conducted. Surveys may find mortalities due to other causes, such as shooting, vehicle collision, and lead poisoning, but which are discovered in advanced stages of decomposition/bones where cause of death cannot be determined, thereby elevating numbers reported. Utilities could be penalized for proactive survey efforts that cause the utility to exceed allowed take (i.e., ''additional specified mitigation measures that would be triggered if the level of take anticipated is exceeded or if new scientific information demonstrates that the additional mitigation measures are necessary for the preservation of eagles'').

Response: The obligation to avoid taking eagles already exists under the Eagle Act and the MBTA; this rule merely provides for long-term permits to authorize such take. If surveys reveal the utility is taking large numbers of eagles, the utility will be responsible for measures to reduce take and to obtain permits for any take if they want to be in compliance with the Eagle Act. Permittees will not be held accountable for take that cannot reasonably be attributed to their activities.

Other

Comment: Public lands typically enjoy longer, more certain levels of protection from development than private lands. Therefore, it is particularly important that public lands remain as free from activities that can harm wildlife as is possible. The Service should refrain from issuing permits for large-scale incidental take of eagles on public land unless the land management agency agrees to a very specific plan of vigorous monitoring and enforcement of the permit terms.

Response: The permitted party will be responsible for monitoring, and the Service is responsible for enforcement, although land management agencies may assist, depending on where the project is located. Federal land

management agencies have independent responsibilities to protect eagles and other migratory birds under Executive Order 13186, Responsibilities of Federal Agencies To Protect Migratory Birds (January 10, 2001). A programmatic permit does not authorize development, construction, or operation of any facility, only the take of eagles by the facility.

Comment: Even though wind power may ultimately be an important element for avoiding climate change, the Service should not issue permits for wind facilities built on ridge tops and eagle migration routes—even if that is where the best winds are.

Response: When an applicant initially approaches the Service, we advise them to collect information about eagle use of an area. Based on information collected and provided, the Service and applicant work together to avoid high eagle use areas. If surveys document eagles along ridge tops or eagle migration areas, those would likely be areas the Service would recommend avoiding. The Service will not issue a permit unless an activity can be made compatible with the conservation standards of the Eagle Act.

Comment: In the notice for its 2009 regulations, the Service said that it would, in coordination with States and Indian tribes, ''develop monitoring and research adequate to both resolve current uncertainties in the data and to provide enhanced ability to detect the effects of the permit program.'' The Service should invest in a comprehensive management research program in partnership with the renewable energy community and other stakeholders to address information gaps.

Response: The Service has convened a technical assessment team consisting of technical experts from all Federal agencies with a stake in eagle conservation and the State fish and wildlife agencies to undertake this very task. The Service has invited tribes to participate in this process as well.

Comment: Permits that predate the extended permit tenure should not be extended beyond 5 years unless amended to comply with standards for 30-year permits.

Response: We agree. Existing 5-year permits will not automatically be extended. Any permittee with an already issued programmatic permit would need to apply for an extension and must comply with the standards for long-term permits established by this final rule to obtain a long-term permit.

Comment: Permitted wind energy facilities should be required to allow researchers on their premises to conduct studies aimed at reducing impacts to eagles as well as other migratory birds.

Response: Permitted facilities will be required to allow access by the Service and its agents. We will likely audit monitoring records of the permittee, and we may conduct our own monitoring. But we cannot extend this authority to other individuals or entities. However, the data collected under the post-construction monitoring and provided to the Service as required by a permit will be available to the public.

Comment: The Service should extend post-delisting monitoring of bald eagles beyond the current commitment of 20 years. It is critical to understand regional eagle population levels and trends, as well as sources of cumulative risk on the landscape when evaluating risks associated with a given permit application.

Response: Many of the surveys that were done while the bald eagle was listed as an endangered, and then a threatened, species were conducted by the States. Neither the Service nor most States have the resources to extend monitoring for a species that is relatively healthy, when surveys and monitoring are much needed for other species that may be in peril.

Comment: The Service should commit to convening periodic meetings of scientists and State wildlife agency personnel with knowledge of regional eagle population levels and trends to share data and develop recommendations for allowable take levels by region, prior to changing current permitting practices.

Response: We do convene and participate in such meetings and agree they are of value.

Comment: The following statement is inaccurate: ''Utility-scale wind energy facilities and electric transmission companies are likely to be the most frequent programmatic permit applicants because of the known risk to eagles from collision with wind turbines and electric power lines.'' Collisions with transmission lines are not commonly documented for golden eagles.

Response: We agree with this comment. Although collisions with transmission lines are not unheard of, we should have said: ''Utility-scale wind energy facilities and electric transmission companies are likely to be the most frequent programmatic permit applicants because of the known risk to eagles from collision with wind turbines and *electrocution on* power lines.''

Comment: The Service should consider developing a streamlined process for adding eagle take provisions to existing Special Purpose Permits that allow salvage of bird carcasses under power lines and at energy facilities. Such a process would likely increase utility participation due to time and cost efficiencies for permitting and consideration of sensitive or proprietary company information. Greater utility participation in this process would likely benefit eagle populations and aid the Service in meeting its no net loss thresholds by increasing the number of proactive pole retrofits.

Response: Electric utilities and energy companies with Special Purpose Permits that allow salvage of bird carcasses may find the process of applying for eagle take permits somewhat easier because of practices they have already established to qualify for the salvage permits. Such practices include implementation of good monitoring plans and protocols and a commitment to implementing measures to reduce take. However, there are very significant differences in the purpose, requirements, and criteria for the two types of permits, not the least of which is that the Special Purpose permits do not cover eagles, whereas the eagle take permits cover only eagles.

Comment: Permitted wind energy facilities should be required to allow salvage of dead birds [eagles] by holders of salvage permits subject to requirements that the carcasses be turned over for law enforcement purposes and eagle carcasses be sent to the National Eagle Repository.

Response: Permitted wind energy facilities will be required to monitor for take at projects and to collect dead birds there. Salvage of birds at permitted wind energy facilities must be for purposes of accurately determining species fatality rates and determining whether individual turbines or strings of turbines are responsible for the majority of eagle fatalities. Salvage protocols should include standardized carcass searches, searcher efficiency trials, and carcass removal by scavenger trials. Allowing another party to pick up carcasses at these sites would interfere with such protocols.

Comment: A condition of permits to wind companies should be to pick up all dead birds as often as possible to minimize the risk to scavenging eagles.

Response: This requirement is likely to be a condition on most, if not all, programmatic permits.

Comment: If power line utilities are interested in applying for a programmatic take permit for their facilities or the construction of additional facilities, will the FWS be required to review the existing operations and maintenance for the existing infrastructure in order to issue

a permit? Permit applicants with existing facilities (such as existing electrical systems) should be allowed to use their own proprietary eagle mortality data to estimate future eagle take rather than relying on theoretical modeling. Mortality estimates should be specific to the species and type of facility being considered. While companies with existing facilities and data would provide this data to the Service as part of the permit application, companies would require assurances from the Service regarding disclosure of sensitive, confidential, or proprietary information (including, but not limited to, construction engineering and design, facility planning, mortality data, customer information, etc.).

Response: Eagle mortality data submitted with an application for a programmatic take permit would not be treated as confidential business information. Additionally, the Service expects to make eagle mortality information from annual reports and 5-year review compilation reports public.

Comment: The Service should take steps to streamline and expedite the process for making eagle permitting decisions. The lengthy and uncertain permitting process for wind development projects significantly compromises the industry's ability to attract financing and bring much-needed clean energy to market, and eagle permitting constitutes just one of a multitude of permitting hurdles developers face in moving projects forward. There should be an inter-agency consultation process similar to that provided by ESA section 7(a)(2).

Response: The inter-agency consultation process provided by ESA section 7(a)(2), which applies only to actions authorized, funded, or carried out by Federal agencies, is statutorily defined in the ESA and further clarified in agency ESA-implementing regulations. There is no statutory inter-agency consultation provision in the Eagle Act. The Service did not propose creating an ESA-like consultation process for eagle incidental take permits. As we move forward with additional modifications to the Eagle Act regulations, we will consider alternative processes for issuing take permits.

Comment: The Service should make permitting decisions on a regional scale where multiple projects are proposed, rather than issuing mortality permits to each facility.

Response: As noted above, permits will normally be issued to individual facilities that are likely to take eagles. Even for single-facility permits, our NEPA analysis will consider the cumulative impacts of all projects already operating in a given region. Where multiple projects are proposed in a given region or operated by a single company, we may issue a multi-facility permit. While each facility would be responsible for operation in accordance with the terms and conditions of the multi-facility permit, a comprehensive programmatic NEPA process at the regional scale where multiple projects are proposed would facilitate consistency between permit conditions for each operator and better address cumulative impacts. In such cases, project proponents must provide the Service with survey data and other additional information as part of programmatic permit applications. Therefore any multi-facility permits will ensure that the cumulative impacts of all the facilities included in such projects are taken into account.

FWS understands that some stakeholders prefer an alternative permit framework based on the concept of comprehensive ''regional eagle conservation plans'' where permits are issued based on regional population levels. Further, some stakeholders have suggested that the Service should work to develop these ''regional eagle conservation plans'' before beginning to issue 30-year permits. The Service agrees that the regional approach envisioned by such plans is appropriate and believes it has a permitting process that will ensure conservation at regional and local scales.

The 2009 Final Environmental Assessment describes how the Service will assess the effects of permitted activities on eagle populations. The 2009 Final Environmental Assessment used the best available information at the time to estimate regional populations and establish regional take thresholds needed to maintain stable or increasing populations. Since we completed the Final Environmental Assessment, the Service has developed the Eagle Conservation Plan Guidance for Land-based Wind Energy (ECPG). The ECPG further elaborates on how we recommend wind project developers and operators collect information about eagle use near their projects as they prepare ECPs. We are assessing project impacts on eagles relative to local area populations, which are smaller than BCRs for golden eagles or Bald Eagle Management Units. Bald eagle local area populations are the number of eagles within 43 miles of a project. Golden eagle local area populations are with 140 miles of a project. We calculate eagle local area populations and consider all known sources of eagle fatalities within the local area as we assess cumulative impacts to local and regional eagle populations.

Service and U.S. Geological Survey biologists, as well as biologists at other agencies and universities, have been conducting, and continue to carry out, research on eagle populations, including at the regional scale. They have: (1) Evaluated existing data on golden eagle population status and trends and published updated information; (2) worked towards developing models to predict golden eagle occurrence; (3) developed initial models to predict eagle mortalities at wind farms and methods to evaluate and update those predictive models as data on actual fatalities at permitted facilities become available; and (4) developed a general framework to test experimental measures to reduce eagle fatalities at operating wind facilities with programmatic eagle take permits. Agencies have also conducted or sponsored aerial nesting surveys of golden eagles in some states. Work is underway by various stakeholders to enhance understanding of mitigation and siting options, as well as monitoring strategies. As these research projects advance, they will provide the Service additional information on which to base permit, policy, and regulatory decisions related to national eagle conservation.

For the above stated reasons, we believe there is a process in place that builds on insight from the 2009 Final Environmental Assessment and the ECPG (including best management practices and take thresholds for regional eagle management units) to make informed determinations regarding issuance of eagle take permits for up to 30 years. Moreover, with particular focus on the highest priority regions, and considering the best emerging research as it becomes available, we will continue working to improve our understanding of sustainable population levels, monitoring plans, and siting/mitigation strategies in order to better inform our permitting decisions. In addition to the above, project proponents must provide the Service with survey data and other additional information as part of programmatic permit applications. For the above stated reasons, we believe there is a process in place to make informed determinations regarding issuance of eagle take permits for up to 30 years.

An additional consideration is that comprehensive regional conservation plans would likely require redirecting significant resources and take several years to complete. This could in turn slow the issuance of eagle permits currently under review to new and

existing operators, and impinge on our ability to maximize learning opportunities that will provide conservation benefits to eagles under these initial permits. We believe the conservation gains achieved by working with operators through the permitting process are of the highest importance, and therefore should take precedence in the allocation of staff resources.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The OIRA has determined that this rule is significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. Most community-scale and distributed wind facilities and other small entities are not likely to take eagles or need an eagle take permit, so this rule will not affect those small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act and determined that this action will not have a significant economic impact on a substantial number of small entities.

Since the eagle permit regulations were published we have received few programmatic permit applications for utility-scale wind energy facilities. As noted previously, we anticipate a greater volume of permit applications in the future, although we expect the number to increase gradually for several years and perhaps eventually reach an average of 40 or fewer per year. Utility-scale wind energy facilities and electric transmission companies are likely to be the most frequent programmatic permit applicants, because of the known risk to eagles from collisions with wind turbines and electrocution on power lines.

Many wind project developers and operators are by definition ''small entities.'' The SBA Small Business Size Standards identify a utility engaged in electric power generation and electric power distribution as a small entity if its total output for the preceding fiscal year did not exceed 4 million megawatt hours (13 CFR 121.201). The total installed utility-scale windpower in the U.S. at the end of 2012 was 60,007 megawatts (American Wind Energy Association 2013). Based on the SBA standard, we estimate that a substantial number of wind power applicants for programmatic permits will be small entities. Given current domestic wind energy cumulative wind capacity and other wind energy industry statistics, we anticipate that a substantial number of applicants for programmatic permits for wind energy projects will be small entities as defined in 13 CFR 121.201, such as industrial building construction companies with less than $33.5 million of annual receipts, and electrical generating companies with less than 4 million megawatt hours of generation, transmission, and/or distribution.

We anticipate that most of the applications will be from larger facilities. Community scale and distributed wind facilities that use smaller tower and rotor blades are unlikely to pose a risk to take eagles if sited responsibly, and may not need eagle take permits.

An applicant for a programmatic permit would pay a $36,000 processing fee to apply for a permit up to 30 years. Additionally a permittee would pay an administration fee ranging from $2,600 to $15,600, depending upon the permit tenure. Amortized over the life of a 30-year permit, this would range from $167 per year to $1,720 per year. We believe most applicants will seek a 30-year permit to match the life of the project. We do not believe this would impose a significant economic impact on these small entities.

Although businesses in other business sectors, such as railroads, timber companies, and pipeline companies, could also apply for programmatic permits, we anticipate the number of permit applicants in such sectors to be very small, on the order of one or two per year for each such sector. Thus, we anticipate that the rule will not have a significant economic impact on a substantial number of small entities in sectors other than the utility sector as described above.

In addition to the increased application processing fee, the additional specified mitigation measures that could be required under the terms and conditions of permits issued with a term of longer than 5 years could result in some additional costs to the permittee, but those costs should be offset by the reduction in uncertainty for the permittee achieved by securing a 30-year programmatic permit rather than a 5-year standard permit. Consequently, we certify that, because this rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under SBREFA (5 U.S.C. 804(2)).

a. This rule will not have an annual effect on the economy of $100 million or more.

b. This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. This rule will 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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we have determined the following:

a. This rule will not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. The regulatory revisions will not affect small government activities in any significant way.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. It is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, the rule will not have significant takings implications. This rule does not contain any provisions that could constitute taking of private property. Therefore, a takings implication assessment is not required.

Federalism

This rule will not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It will not interfere with the States' abilities to manage themselves or their funds. No significant economic impacts are expected to result from the regulations change.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

The Office of Management and Budget (OMB) reviewed and approved the information collection requirements associated with migratory bird permits, including 5-year eagle take programmatic permits, and assigned OMB Control Number 1018–0022, which expires February 28, 2014. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. This rule contains new information collection requirements associated with long-term eagle take programmatic permits. OMB has approved these new requirements and assigned OMB Control Number 1018–0151, which expires October 31, 2016.

We have revised the regulations for permits for take of golden eagles and bald eagles where the take is associated with, but not the purpose of, the activity. We have extended the maximum term for programmatic permits to 30 years, if they incorporate conditions requiring the permittee to implement additional adaptive conservation measures, if necessary, to ensure the preservation of eagles. This change will facilitate the development of renewable energy and other projects that are designed to be in operation for many decades. This change will also provide more certainty to project proponents and their funding sources, while continuing to protect eagles consistent with statutory mandates. We have also increased the application processing fee for most programmatic permits from $1,000 to $36,000. See ''Permit Application Processing Fee and Administration Fee,'' above, for more detailed information on the increase in permit fees.

Title: Long-Term Eagle Take Programmatic Permits, 50 CFR 13 and 22.

OMB Control Number: 1018–0151.

Service Form Numbers: 3–200–71 and 3–202–15.

Type of Request: New collection.

Description of Respondents: Individuals; businesses; and State, local, and tribal governments. We expect that the majority of applicants seeking a 30-year permit will be in the energy production and electrical distribution business.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Estimated number of respondents	Estimated number of annual responses	Completion time per response	Total annual burden hours
Application*	20	20	452	9,040
Monitoring and Reporting	20	20	312	6,240
Recordkeeping	20	20	30	600
Amendments	3	3	70	210
Transfers	3	3	120	120
Totals	66	66	.....	16,210

* Includes researching permit requirements, conducting preapplication surveys/studies, and completing the application form.

Estimated Total Nonhour Burden Cost: $688,000, based primarily on application processing fees, as well as fees for amendments to permits and for transfer of permits. States, local governments, and tribal governments are exempt from paying these fees.

When this final rule is effective, we will incorporate the burden for the new information collection requirements into OMB Control No. 1018–0022 and discontinue OMB Control Number 1018–0151.

You may send comments on any aspect of these information collection requirements to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop 2042–PDM, Arlington, VA 22203 (mail) or *hope_grey@fws.gov* (email).

National Environmental Policy Act

This rule is excluded from further NEPA analysis in an Environmental Assessment or an Environmental Impact Statement under Department of the Interior categorical exclusion 43 CFR 46.201(i), which excludes from further NEPA analysis ''Policies, directives, regulations, and guidelines: That are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively, or case-by-case.'' Several provisions of this rule are specifically administrative or financial in nature, and therefore, subject to the first part of this categorical exclusion. For instance, the implementation of a new fee schedule, the adjustments to the permit transfer and right of succession requirements, and the reduction of the administrative burdens and duplication of effort represented by the extension of permit duration to a possible 30-years, instead of the current 5-year limit, under which proponents of longer-term projects must apply for, and the FWS review permits more frequently.

The extension of the allowable permit duration from 5 to 30 years is subject to the second part of this categorical exclusion. Issuance of a permit of any duration for take of eagles requires compliance with NEPA. The environmental effects of each project, including whether the applicant has adequately reduced and mitigated environmental effects over the specific permit duration requested, will be

analyzed in more detail at that time. A 50 CFR 22.26 eagle permit must contain permit conditions and be supported by an appropriate NEPA analysis to ensure the underlying project or action will continue to meet regulatory requirements. Furthermore, any authorized take must meet the Eagle Act's preservation standard throughout the entire duration of the permit, whether it is 5 years or 30 years. A permit with a duration of 30 years is, thus, likely to contain more conditions than a permit with a duration of 5 years to ensure continued compliance over the longer time span, including conditions that incorporate adaptive management principles, and be supported by appropriate NEPA analysis to account for reasonably anticipated changed circumstances. 43 CFR 46.145 sets forth the Service's NEPA obligations when adaptive-management principles are used to mitigate the uncertainty of long-term impacts. If the original NEPA documents supporting the permit decision did not adequately address the full range of potential revisions to the ACPs, or substantive new permit conditions are added, revisions would require additional NEPA review to support a decision on the revised permit. Additional conditions may include specific mitigation measures, possibly including additional compensatory mitigation requirements, that are triggered if actual take caused by the project exceeds anticipated take or to account for a reduction in local or regional eagle populations. Moreover, if such conditions prove inadequate at any time, the Service is authorized to amend permits as necessary under both paragraph (c)(7) of 50 CFR 22.26—establishing that the Service may amend and even revoke permits as necessary to safeguard eagle populations—and paragraph (b) of general permit regulation 50 CFR 13.23, under which the Service may amend a permit for just cause at any time upon a written finding of necessity.

Finally, pursuant to 43 CFR 46.205(c), we have reviewed our reliance upon this categorical exclusion against the Department of the Interior's list of extraordinary circumstances, at 43 CFR 46.215, and have found that none apply to this final rule.

As explained above, the rule's impacts are primarily administrative in nature and any potential environmental effects of extending the permit duration will be addressed by permit conditions that ensure the Eagle Act's preservation standard and all regulatory requirements will continue to be met throughout the permit's duration, whether it is 5 years or 30 years. Therefore, this rulemaking is not expected to have any potentially significant environmental effects on future protection of eagles or other environmental resources. Similarly, the effects of this rule are not highly controversial as they mainly involve procedural alterations to regulatory permit provisions that are not anticipated to have any meaningful or significant environmental effects on eagle populations. While it is true that the anticipated impact of a particular project is likely to be harder to predict over 30 years than over 5 years, the permit conditions for longer-term permits will incorporate adaptive management principles (for example, triggers requiring additional measures for changed circumstances) designed to ensure that the project will continue to meet all permit requirements throughout the permit's duration. The conditions in each individual permit must ensure that the project will continue to meet the requirements of the permit regulations whatever the individual permit's duration.

For all these reasons, further NEPA analysis in an Environmental Assessment or an Environmental Impact Statement of this change to the regulations is not required.

Endangered and Threatened Species

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (16 U.S.C. 1536(a)(1)). It further states that the Federal agency must ''insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat'' (16 U.S.C. 1536(a)(2)). This rule, which amends the regulations governing administration of the permitting process under the Eagle Act, will not affect endangered or threatened species or designated critical habitat. The rule simply increases the number of years that a programmatic permit may be valid under certain conditions and requires the Service to conduct 5-year reviews to monitor compliance with the permit conditions. However, consultation under ESA Section 7 may be required prior to issuance of a permit for an individual project. If a project is expected to result in take of any listed species, the permit applicant would need an incidental take authorization under ESA Section 7 or 10.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that this rule will not interfere with tribes' abilities to manage themselves, their funds, or tribal lands.

Some tribes that value eagles as part of their cultural heritage objected to the promulgation of the 2009 eagle take permit rule based on the belief that the regulations would not adequately protect eagles. Those tribes may perceive further negative effects from these proposed changes. However, eagles would be sufficiently protected under this rule because permits with terms longer than 5 years will be issued only to those applicants who commit to adaptive management measures to ensure the preservation of eagles, except for applicants who are able to implement scientifically proven measures to significantly reduce take at the time the permit is issued (e.g., electric utilities issued permits that require full implementation of Avian Powerline Interaction Committee-approved measures to minimize take of migratory birds and eagles).

Energy Supply, Distribution, or Use (Executive Order 13211)

E.O. 13211 addresses regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule will facilitate the funding, construction, and operation of numerous energy generation projects, including wind power facilities, the rule is not a significant regulatory action under E.O. 13211, and no Statement of Energy Effects is required.

Literature Cited

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List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 22

Birds, Exports, Imports, Migratory birds, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons described in the preamble, we are amending subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 13—GENERAL PERMIT PROCEDURES

■ 1. The authority for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j–l, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

■ 2. Revise the table in § 13.11(d)(4) to read as follows:

§ 13.11 Application procedures.

* * * * *

(d) * * *

(4) * * *

Type of permit	CFR citation	Permit application fee	Administration fee [1]	Amendment fee
Migratory Bird Treaty Act				
Migratory Bird Import/Export	50 CFR 21	75		
Migratory Bird Banding or Marking	50 CFR 21	No fee		
Migratory Bird Scientific Collecting	50 CFR 21	100		50
Migratory Bird Taxidermy	50 CFR 21	100		
Waterfowl Sale and Disposal	50 CFR 21	75		
Special Canada Goose	50 CFR 21	No fee		
Migratory Bird Special Purpose/Education	50 CFR 21	75		
Migratory Bird Special Purpose/Salvage	50 CFR 21	75		
Migratory Bird Special Purpose/Game Bird Propagation	50 CFR 21	75		
Migratory Bird Special Purpose/Miscellaneous	50 CFR 21	100		
Falconry	50 CFR 21	100		
Raptor Propagation	50 CFR 21	100		
Migratory Bird Rehabilitation	50 CFR 21	50		
Migratory Bird Depredation	50 CFR 21	100		50
Migratory Bird Depredation/Homeowner	50 CFR 21	50		
Bald and Golden Eagle Protection Act				
Eagle Scientific Collecting	50 CFR 22	100		50
Eagle Exhibition	50 CFR 22	75		
Eagle Falconry	50 CFR 22	100		
Eagle—Native American Religion	50 CFR 22	No fee		
Eagle Take permits—Depredation and Protection of Health and Safety.	50 CFR 22	100		
Golden Eagle Nest Take	50 CFR 22	100		50
Eagle Transport—Scientific or Exhibition	50 CFR 22	75		
Eagle Transport—Native American Religious Purposes	50 CFR 22	No fee		
Eagle Take—Associated With But Not the Purpose of an Activity.	50 CFR 22	500		150
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, low-risk projects, 5- to 30-year tenure [2].	50 CFR 22	8,000	500	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, up to 5-year tenure.	50 CFR 22	36,000	2,600	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 5-year to 10-year tenure.	50 CFR 22	36,000	[3] 5,200	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 10-year to 15-year tenure.	50 CFR 22	36,000	[3] 7,800	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 15-year to 20-year tenure.	50 CFR 22	36,000	[3] 10,400	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 20-year to 25-year tenure.	50 CFR 22	36,000	[3] 13,000	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Programmatic, over 25-year to 30-year tenure.	50 CFR 22	36,000	[3] 15,600	1,000
Eagle Take—Associated With But Not the Purpose of an Activity—Transfer of a programmatic permit.	50 CFR 22	1,000		
Eagle Nest Take	50 CFR 22	500		150
Eagle Nest Take—Programmatic	50 CFR 22	1,000		500
Eagle Take—Exempted under ESA	50 CFR 22	No fee		

Type of permit	CFR citation	Permit application fee	Administration fee [1]	Amendment fee
Endangered Species Act/CITES/Lacey Act				
ESA Recovery	50 CFR 17	100		50
ESA Interstate Commerce	50 CFR 17	100		50
ESA Enhancement of Survival (Safe Harbor Agreement)	50 CFR 17	50		25
ESA Enhancement of Survival (Candidate Conservation Agreement with Assurances).	50 CFR 17	50		25
ESA Incidental Take (Habitat Conservation Plan)	50 CFR 17	100		50
ESA and CITES Import/Export and Foreign Commerce	50 CFR 17	100		50
ESA and CITES Museum Exchange	50 CFR 17	100		50
ESA Captive-bred Wildlife Registration	50 CFR 17	200		100
—Renewal of Captive-bred Wildlife Registration	50 CFR 17	100		
CITES Import (including trophies under ESA and MMPA)	50 CFR 17, 18, 23	100		50
CITES Export	50 CFR 23	100		50
CITES Pre-Convention	50 CFR 23	75		40
CITES Certificate of Origin	50 CFR 23	75		40
CITES Re-export	50 CFR 23	75		40
CITES Personal Effects and Pet Export/Re-export	50 CFR 23	50		
CITES Appendix II Export (native furbearers and alligators—excluding live animals).	50 CFR 23	100		50
CITES Master File (includes files for artificial propagation, biomedical, etc., and covers import, export, and re-export documents).	50 CFR 23	200		100
—Renewal of CITES Master File	50 CFR 23	100		
—Single-use permits issued on Master File	50 CFR 23	5 [4]		
CITES Annual Program File	50 CFR 23	50		
—Single-use permits issued under Annual Program	50 CFR 23	5 [4]		
CITES replacement documents (lost, stolen, or damaged documents).	50 CFR 23	50		50
CITES Passport for Traveling Exhibitions and Pets	50 CFR 23	75 [5]		
CITES/ESA Passport for Traveling Exhibitions	50 CFR 23	100[5]		
CITES Introduction from the Sea	50 CFR 23	100		50
CITES Participation in the Plant Rescue Center Program	50 CFR 23	No fee		
CITES Registration of Commercial Breeding Operations for Appendix—I Wildlife.	50 CFR 23	100		
CITES Request for Approval of an Export Program for a State or Tribe (American Ginseng, Certain Furbearers, and American Alligator).	50 CFR 23	No fee		
Import/Export License	50 CFR 14	100		50
Designated Port Exception	50 CFR 14	100		50
Injurious Wildlife Permit	50 CFR 16	100		50
—Transport Authorization for Injurious Wildlife	50 CFR 16	25		
Wild Bird Conservation Act (WBCA)				
Personal Pet Import	50 CFR 15	50		
WBCA Scientific Research, Zoological Breeding or Display, Cooperative Breeding.	50 CFR 15	100		50
WBCA Approval of Cooperative Breeding Program	50 CFR 15	200		100
—Renewal of a WBCA Cooperative Breeding Program	50 CFR 15	50		
WBCA Approval of a Foreign Breeding Facility	50 CFR 15	250 [6]		
Marine Mammal Protection Act				
Marine Mammal Public Display	50 CFR 18	300		150
Marine Mammal Scientific Research/Enhancement/Registered Agent or Tannery.	50 CFR 18	150		75
—Renewal of Marine Mammal Scientific Research/Enhancement/Registered Agent or Tannery.	50 CFR 18	75		

[1] Assessed when a permit is issued.
[2] "Low-risk" means a project or activity is unlikely to take an eagle over a 30-year period and the applicant for a permit for the project or activity has provided the Service with sufficient data obtained through Service-approved models and/or predictive tools to verify that the take is likely to be less than 0.03 eagles per year.
[3] $2,600 assessed upon approval of permit, and for each 5-year review.
[4] Each.
[5] Per animal.
[6] Per species.

* * * * *

■ 3. Amend § 13.24 by revising paragraph (c) to read as follows:

§ 13.24 Right of succession by certain persons.

* * * * *

(c) In the case of permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) or permits issued under § 22.26 of this subchapter B, the successor's authorization under the permit is also subject to our determination that:

(1) The successor meets all of the qualifications under this part for holding a permit;

(2) The successor has provided adequate written assurances that it will provide sufficient funding for any applicable conservation measures, conservation plan, or Agreement and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The successor has provided such other information as we determine is relevant to the processing of the request.

■ 4. Amend § 13.25 by revising paragraph (b) and adding paragraph (f) to read as follows:

§ 13.25 Transfer of permits and scope of permit authorization.

* * * * *

(b) Permits issued under § 17.22(b) through (d) or § 17.32(b) through (d) or permits issued under § 22.26 of this subchapter B may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided we determine that:

(1) The proposed transferee meets all of the qualifications under this part for holding a permit;

(2) The proposed transferee has provided adequate written assurances of sufficient funding for the conservation measures, conservation plan, or Agreement, and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) The proposed transferee has provided other information that we determine is relevant to the processing of the submission.

* * * * *

(f) In the case of permits issued under § 22.26 of this subchapter B to a Federal, State, tribal, or local governmental entity, a person is under the direct control of the permittee if the person is under the jurisdiction of the permittee, provided the permittee has the regulatory authority to require the person to comply with the terms and conditions of the permit and the permit provides that such person(s) may carry out the authorized activity.

PART 22—EAGLE PERMITS

■ 5. The authority for part 22 continues to read as follows:

Authority: 16 U.S.C. 668–668d; 16 U.S.C. 703–712; 16 U.S.C. 1531–1544.

■ 6. Amend § 22.26 by:

■ a. Revising paragraph (c)(3) introductory text;

■ b. Revising paragraph (h); and

■ c. Adding paragraphs (i) and (j).

The revisions and additions read as follows:

§ 22.26 Permits for eagle take that is associated with, but not the purpose of, an activity.

* * * * *

(c) * * *

(3) You must submit an annual report summarizing the information you obtained through monitoring to the Service every year that your permit is valid and for up to 3 years after completion of the activity or termination of the permit, as specified in your permit. If your permit expires or is suspended or revoked before the activity is completed, you must submit the report within 60 days of such date. The Service will make eagle mortality information from annual reports of programmatic permits available to the public. Reporting requirements include:

* * * * *

(h) *Permit reviews.* At no more than 5 years from the date a permit is issued, and every 5 years thereafter until a programmatic permit is due to expire in 5 or fewer years, the permittee will compile and submit to the Service, eagle fatality data or other pertinent information that is site-specific for the project, as required by the permit. The 5-year review will be comparable to the initial review of the permit application. The Service will make eagle-mortality information compiled in 5-year review reports available to the public. As part of the 5-year-review process, we will determine if trigger points specified in the permit have been reached that would indicate that additional conservation measures as described in a permit should be implemented to potentially reduce eagle mortalities, or if additional mitigation measures are needed. Additional post-implementation monitoring may be required to determine the effectiveness of additional conservation measures.

(1) During each 5-year review, we will reassess post-construction monitoring, fatality rates, effectiveness of measures to reduce take, the appropriate amount and effectiveness of compensatory mitigation, and the status of the eagle population.

(2) Depending on the findings of the review, we may make changes to a permit as necessary, including any of the following:

(i) update fatality predictions for the facility;

(ii) require implementation of additional conservation measures as described in the permit;

(iii) update monitoring requirements

(iv) revise compensatory mitigation requirements in accordance with the permit, or

(v) suspend or revoke the permit.

(3) In consultation with the permittee, we will determine compensatory mitigation for future years for the project, taking into account the observed levels of mortality and any anticipated reduction in mortality from additional conservation measures.

(i) *Permit duration.* The duration of each permit issued under this section will be designated on its face and will be based on the duration of the proposed activities, the period of time for which take will occur, the level of impacts to eagles, and the nature and extent of mitigation measures incorporated into the terms and conditions of the permit. Standard permits will not exceed 5 years. A permit for programmatic take will not exceed 30 years.

(j) *Transfer of programmatic permits.* Programmatic permits may be transferred to new owners of facilities, provided that the new owners have never had a permit issued by the U.S. Fish and Wildlife Service suspended or revoked, and have not been convicted of violating a Federal wildlife law in the last 10 years. The transferee must meet all of the qualifications under this part for holding a permit, as well as the requirements of § 13.25(b) of this subchapter B.

Dated: November 18, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–29088 Filed 12–6–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 110819518–3833–02]

RIN 0648–BB20

Endangered Fish and Wildlife; Final Rule To Remove the Sunset Provision of the Final Rule Implementing Vessel Speed Restrictions To Reduce the Threat of Ship Collisions With North Atlantic Right Whales

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

ACTION: Final rule.

SUMMARY: NMFS is eliminating the expiration date (or ''sunset clause'') contained in regulations requiring vessel speed restrictions to reduce the likelihood of lethal vessel collisions with North Atlantic right whales. The regulations restrict vessel speeds to no more than 10 knots for vessels 65 ft (19.8 m) or greater in overall length in certain locations and at certain times of the year along the east coast of the U.S. Atlantic seaboard. The purpose of the regulation is to reduce the likelihood of deaths and serious injuries to endangered North Atlantic right whales that result from collisions with ships. The speed regulations will expire December 9, 2013, unless the sunset clause is removed. With this final rule, NMFS is removing the rule's sunset provision. All other aspects of the rule remain in place until circumstances warrant further changes to the rule.

DATES: This final rule is effective December 6, 2013.

ADDRESSES: Copies of this rule, the revised Economic Analysis for this rule, the Final Environmental Impact Statement and Economic Analysis (Nathan Associates Inc., 2008) for the original October 2008 final rule can be obtained from the Web site listed under the electronic access portion of this document. Written requests for copies of these documents and this final rule's Regulatory Impact Review should be addressed to: Chief, Marine Mammal and Sea Turtle Conservation Division, Attn: Right Whale Ship Strike Reduction Rule, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the same address indicated immediately above.

FOR FURTHER INFORMATION CONTACT: Gregory Silber, Ph.D., Fishery Biologist, Office of Protected Resources, NMFS, at (301) 427–8402.

SUPPLEMENTARY INFORMATION:

Electronic Access

Background documents related to this final rule, including a list of the literature cited here, the Final Environmental Impact Statement for the initial October 2008 final rule on this matter, and the initial and revised Economic Analyses, can be downloaded from *http://www/nmfs.noaa.gov/shipstrike*. The Regulatory Impact Review can be obtained from the name and address listed above.

Background

The preamble to this final rule provides a brief summary of status and growth rates of, and the threats to, the western North Atlantic right whale population. Additional information on these population parameters can be found in NMFS's previous actions regarding vessel speed restrictions including an Advanced Notice of Proposed Rulemaking (69 FR 30857, June 1, 2004), Notice of Proposed Rulemaking (71 FR 36304; June 26, 2006), and Final Rule (73 FR 60173, October 10, 2008), as well as in the North Atlantic right whale Marine Mammal Stock Assessment Report (Waring *et al.,* 2012; *http://www.nmfs.noaa.gov/pr/pdfs/sars/ao2012whnr-w.pdf*) all of which are incorporated here by reference.

The western North Atlantic right whale (*Eubalaena glacialis*) remains highly endangered. Population size estimates for this species are based on a census of known individual whales identified using photo-identification techniques. The most recent (October 2010) review of these data indicated that a minimum of 425 individually recognized whales were known to be alive during 2009. Whales catalogued by this date included 20 of the 39 calves born during that year. Adding the 19 calves not yet catalogued brings the minimum number alive in 2009 to 444 (Waring *et al.,* 2013). This number represents a known minimum population size for the species. At this level, with the exception of North Pacific right whales, North Atlantic right whales are the world's most critically endangered large whale species and one of the world's most endangered mammals.

Based on the findings of a workshop to assess the status of right whales globally, at which the best available data at that time was considered, the International Whaling Commission's (IWC) Scientific Committee provided two estimates of western North Atlantic right whale population size in 1986: 380–688 and 493–1100 individuals (Brownell *et al.,* 1986). Following a 1996 workshop (using 1992 data) and based on an examination of several parameters and population size estimate models, the IWC's Scientific Committee concluded in 1998 that there were an estimated 314 individuals (no confidence intervals were given) in the North Atlantic right whale population (Best *et al.,* 2001). Therefore, at a currently estimated minimum of 444 individuals, and considering likely population declines in the 1990s (Fujiwara and Caswell, 2001), the number of individuals that currently exist in this population is believed to be not substantially different from the number that existed over two decades ago (Best *et al.,* 2001). A population size of several hundred individuals is precariously small for any large whale or large mammal population, particularly given that this population is frequently exposed to anthropogenic threats that result primarily from entanglement in commercial fishing gear and collisions with vessels.

In recent years, the western North Atlantic right whale population has exhibited some promising signs of recovery. For example, calving intervals for the population averaged from about 3.5 to more than 5 years for much of the past three decades (Kraus *et al.,* 2001; Kraus *et al.,* 2007), this interval was closer to 3.0 years in recent years (Kraus *et al.,* 2007). In addition, the 20-year (1990–2010) mean annual growth rate is estimated to be 2.6% (Waring *et al.,* 2013). This is encouraging because in some years (1993; 1998–2000) this population is believed to have remained static or declined in size (Waring *et al.,* 2013). However, this growth rate is low compared to growth rates observed in other large whale populations, such as the closely related south Atlantic right whale (*Eubalaena australis*) and western Arctic bowhead whale (*Balaena mysticetus*), which have been recovering steadily at rates of 4 percent or more per year. The growth rate for the North Atlantic right whale is also below the 4 percent default Maximum Net Productivity Level growth rates used for all cetacean species (Wade and Angliss, 1997). Low rates of reproduction in large whale populations mean that recovery rates can be low under the best of circumstances.

Calf production has also been relatively high in the last 10 or so years,

averaging 17.2 (15.3–19.4; 95% C.I.) calves per year (a range of 1–39) between 1993 and 2010 (Waring *et al.,* 2013). This period also includes a number of relatively poor, single-digit calf years (*e.g.,* one calf in 2000) in 1993–1995 and 1998–2000. Seven new calves were documented in the 2011 season.

Not all calves born are ''recruited'' into the population as viable adults or sub-adults due to natural and human-related mortality. The number of known calf deaths ranged from 0–4 and averaged 1.2 per year during 1993–2010. Browning *et al.* (2010) estimated that calf and perinatal mortality was between 17 and 45 individuals from 1989 to 2003. During the 2004 and 2005 calving seasons alone, three adult females were found dead with near-term fetuses. Analyses of the age structure of this population suggest that it contains a smaller proportion of juvenile whales than expected (Hamilton *et al.,* 2007), which may reflect high juvenile mortality rates. An unstable age structure can lead to low reproductive rates (Waring *et al.,* 2013).

Because of its small population size and low growth rates, even low levels of human-caused mortality can pose a significant obstacle for North Atlantic right whale recovery. Anthropogenic activities are likely among the primary causes for the species' failure to recover (Kraus, 1990; Knowlton and Kraus, 2001; Moore *et al.,* 2005; NMFS, 2005; van der Hoop *et al.,* 2013). Population modeling studies in the late 1990s (Caswell *et al.,* 1999; Fujiwara and Caswell, 2001) indicated that preventing the death of two adult females per year could be sufficient to reverse the slow decline detected in right whale population trends observed in the 1990s.

Established criteria to change the listing status from ''endangered'' to ''threatened'' or remove the North Atlantic right whale from the list of threatened and endangered species under the Endangered Species Act (ESA) are provided in the Recovery Plan for the North Atlantic Right Whale (*Eubalaena glacialis*) (NMFS, 2005). The criteria for changing the listing status of right whales have not been met and likely will not be met for a number of years. As noted in this preamble, this whale population is chronically exposed to threats from human activities that retard its recovery. Thus, while there are a number of encouraging signs regarding the growth and productivity of this population, given its current size and the threats to which it is exposed, the species' listing status is not likely to change in the foreseeable future.

The Threat of Vessel Collisions

All large whale species are susceptible to collisions with vessels (Laist *et al.,* 2001; Jensen and Silber, 2003; Van Waerebeek and Leaper, 2008). Such collisions can result in fractured bones, crushed skulls, severed tail stocks, internal hemorrhaging, and deep, broad propeller wounds (Moore *et al.,* 2005; Campbell-Malone, 2007; Campbell-Malone, *et al.,* 2008). Right whales appear to be more vulnerable to ship strikes than other large whale species (Vanderlaan and Taggart, 2007).

From 1970–2011 a total of 91 documented western North Atlantic right whale deaths occurred due to injuries suffered from entanglement in commercial fishing gear, vessel strikes, from unknown causes, or occurred perinatally. Of these, 31 resulted from vessel collisions. Known vessel collision-related right whale deaths generally averaged 1–2 per year in that period.

The number of known vessel strike-related deaths varies inter-annually. For example, for the most recent 5-year period (2006–2010) discussed in marine mammal stock assessment reports for this species (Waring *et al.,* 2013), vessel collision-related right whale deaths or serious injuries occurred at a rate of 1.2 per year (including both U.S. and Canadian waters). However, in 2004–2006 alone, eight right whales died from vessel collisions. The average annual rate of death and serious injury from vessel strikes has subsided in recent years. Although four known vessel strike deaths occurred in U.S. waters alone in 2006–2010, three of these took place in 2006 (prior to the vessel speed limit rule going into effect); the fourth occurred in 2010, after the rule went into effect (but outside vessel speed managed areas). None are known to have occurred in or near vessel speed restriction areas in the time since the rule was implemented.

Studies indicate that female (van der Hoop *et al.,* 2013) and sub-adult (Knowlton and Kraus, 2001) right whales are more often ship strike victims than are other age and gender classes. Although the reasons for this are not clear, one factor may be that pregnant females and females with nursing calves spend more time at the surface than other gender/age classes where they are vulnerable to being struck. The effect of high female and calf death rates on population recovery may be particularly profound if the lost female is at the height of, or just entering, her most reproductively active years. This loss, as well as that of any female offspring, is a permanent loss of reproductive potential to the population.

Annual death rates calculated from detected mortalities represent definitive lower bound estimates of human-caused mortality (Waring *et al.,* 2013). The detection of dead whales is opportunistic and detection ''effort'' (largely, in the form of aircraft surveys in some locations) is not comprehensive across all areas and in all times of the year. In addition, it is not always possible to determine with certainty the cause of death from recovered carcasses due, for example, to advanced decomposition. Kraus *et al.* (2005) concluded that the number of documented deaths may be as little as 17 percent of the actual number of deaths from all sources. As such, the number of reported human-caused right whale deaths represents a minimum estimate (Henry *et al.,* 2012; Waring *et al.,* 2013).

Therefore, death and serious injury resulting from collisions with vessels remains a significant threat to the recovery of the western North Atlantic right whale population (Clapham et al., 1999; Kraus *et al.,* 2005; NMFS, 2005, Vanderlaan *et al.,* 2009; van der Hoop *et al.,* 2013).

Right whale deaths resulting from vessel collisions appear to be related, at least in part, to an overlap between important right whale feeding, calving, and migratory habitats and shipping corridors along the eastern United States and Canada. Most right whales that died as a result of ship collisions were first reported dead in or near major shipping channels off east coast ports between Jacksonville, Florida and New Brunswick, Canada.

The ultimate goal of identifying and implementing conservation measures, including this one, on behalf of an endangered species is to recover the species. For the North Atlantic right whale population to recover, vessel-related deaths and serious injuries must be reduced. The North Atlantic Right Whale Recovery Plan (NMFS, 2005) ranks actions to reduce and eliminate such deaths among its highest priorities, and indicates that developing and implementing an effective strategy to address this threat is essential to the recovery of the species.

Reducing the Threat of Vessel Collisions With Right Whales

Steps have been taken to reduce the threat of right whale serious injury and death resulting both from commercial fishing gear entanglement (see, for example, *http://www.nero.noaa.gov/*

Protected/whaletrp/; Knowlton *et al.,* 2012) and from vessel collisions. With regard to the latter, NOAA has worked with the U.S. Coast Guard, other Federal and state agencies, and the International Maritime Organization to modify customary shipping routes to reduce the co-occurrence of vessels and North Atlantic right whales. This has included, for example, establishing recommended vessel routes within Cape Cod Bay and in right whale nursery areas in waters off Georgia and Florida (*http://www.nmfs.noaa.gov/pr/shipstrike/routes.htm;* Lagueux *et al.,* 2011); modifying the vessel Traffic Separation Scheme servicing Boston; and creating an Area To Be Avoided in right whale feeding areas off New England (see, for example, Silber *et al.,* 2012b). NOAA has also helped create a number of mariner notification systems (some of which are based on aircraft surveys designed to provide real-time right whale sighting location information) (Silber and Bettridge, 2012) and has established two Mandatory Ship Reporting systems to help alert mariners to the threat of vessel collisions with whales (Ward *et al.,* 2005; Silber *et al.,* 2012b).

Vessel Speed Restrictions To Reduce the Threat of Vessel Collisions With Right Whales

Through rulemaking, NMFS has also established vessel speed restrictions to reduce the likelihood of fatal collisions with right whales. Speed restrictions apply in specific locations, primarily at key port entrances, and in certain times in Seasonal Management Areas (SMAs). The restrictions apply to vessels 65 feet and greater in length (73 FR 60173, October 10, 2008). NMFS also established a Dynamic Management Area (DMA) program whereby vessels are requested, but not required, to either travel at 10 knots or less or route around locations when certain aggregations of right whales are detected outside SMAs. Finally, the 2008 final rule contained an exception to the speed restriction for when navigational safety requires a deviation.

As indicated in NMFS's 2008 final rule, a number of studies have established a relationship between vessel speed and fatal strikes of large whales. Among the earliest of these was Laist *et al.* (2001), Pace and Silber (2005), and Vanderlaan and Taggart (2007). The latter two studies found that the likelihood of serious injury and death in whales struck by vessels diminished with reduced vessel speed. In particular, the probability of death or serious injury of a struck whale is rapidly diminished when vessel speeds are below 12 knots. The probability continues to decrease as speed decreases. Further, Vanderlaan and Taggart (2007) concluded that for every 1-knot increase in vessel speed, the likelihood of a strike resulting in death or serious injury increased by 1.5 times and that the probability of a fatal strike event increased from 20% at 9 knots to 80% at 15 knots and 100% lethality at 20 knots or more. Vessel speed has also been implicated in vessel strike-related deaths of manatees (Laist and Shaw, 2006; Calleson and Frolich, 2007) and sea turtles (Hazel and Gyuris, 2006; Hazel *et al.,* 2007).

Based on this collection of studies, NMFS issued restrictions of vessel speeds to reduce the threat of vessel collisions with North Atlantic right whales. Findings from these and related studies were also the basis for mandatory vessel speed restrictions to protect humpback whales in Alaska's Glacier Bay National Park and Monument (NPS, 2003; Gende *et al.,* 2011), for voluntary vessel speed restrictions to reduce the incidence of strikes of fin and sperm whales in the Mediterranean Sea (Tejedor *et al.,* 2007; Tejedor and Sagarminaga, 2010), for various whale species in the Pacific Ocean approaches to the Panama Canal, and for humpback, blue, and fin whales in waters off California (DHS/USCG, 2013). Speed restrictions have been in effect since the early 2000s in inland waterways of Florida to reduce the threat of strikes of manatees (*Trichechus manatus latirostris*) by small craft (*http://myfwc.com/wildlifehabitats/managed/manatee/protection-zones/;* Calleson and Frolich 2007; Laist and Shaw, 2006), and indications are that these restrictions have resulted in a decrease in the number of fatal strikes of manatees (Laist and Shaw, 2006).

Recommended vessel speed limits are now used in some settings to limit the incidence of strikes of marine mammals in vessel operations conducted or permitted by various federal agencies (*i.e.,* under ESA, Marine Mammal Protection Act, offshore oil lease-sales and permitting, among other authorities). These include use by the Bureau of Ocean Energy Management for vessel operations involved in offshore energy development activities (BOEM, 2012) and by NMFS for some Army Corps of Engineers dredging activities, NOAA seafloor bathymetric survey, and geophysical survey vessel operations activities (see, for example, NMFS 2013a, b). The Maritime Administration also requires speed limits for liquefied natural gas transport vessels near Boston when right whales are in the vicinity (NMFS, 2007a; NMFS, 2007b).

In the period since NMFS's vessel speed restrictions went into effect, a number of additional studies have been published regarding vessel strikes of large whales. Among them, Vanderlaan *et al.* (2009; regarding right whales along the U.S. and Canadian eastern seaboard), Vanderlaan and Taggart (2009; right whales in Canadian waters), and Gende *et al.* (2011; humpback whales in Alaskan waters) concluded that vessel speed restrictions were effective in reducing the occurrence or severity of vessel strikes of right and other large whale species in various geographic locations.

The impact forces and trauma experienced by a struck whale (Campbell-Malone *et al.,* 2008) and the hydrodynamic forces around the hull of a large vessel and the ways in which vessel speed influences these forces have also been studied (Knowlton *et al.* 1998; Wang *et al.,* 2007, Silber *et al.,* 2010). Computer simulation models used to assess the hydrodynamic forces that vessels might have on a large whale near the hull indicated that, in certain instances, hydrodynamic forces around a vessel would be expected to pull a whale toward a ship, thereby increasing the risk of a strike (Knowlton *et al.,* 1995; Knowlton *et al.,* 1998). These forces increase with increasing speed and thus a whale's ability to avoid a ship in close quarters is likely reduced with increasing vessel speed. In related simulation studies, Clyne (1999) concluded that the number of strikes by passing ships decreased with increasing vessel speeds, but that the number of strikes that occurred in the bow region increased with increasing vessel speeds. Flow tank experiments indicated that as vessel speed increases so does the size of the zone of influence around the hull of a vessel (*i.e.,* the area in which a whale might be drawn into a strike) and acceleration (*i.e.,* impact velocity) experienced by the whale involved in a collision (Silber *et al.,* 2010).

NMFS's 2008 vessel speed restriction final rule, itself, has been the subject of a number of studies. Among these are a legal review (Norris, 2008; Firestone, 2009), economic analysis (Nathan Associates Inc., 2012), effectiveness assessments studies (Pace, 2011; Silber and Bettridge, 2012; van der Hoop *et al.,* 2013), and risk reduction studies (Lagueux *et al.,* 2011, Wiley *et al.,* 2011; Conn and Silber, 2013).

Applying the risk analysis of fatal whale strikes as a function of vessel speed provided by Vanderlaan and Taggart (2007), Lagueux *et al.* (2011) and Wiley *et al.* (2011) computed risk

reduction resulting from NMFS's vessel speed restrictions in certain areas. Lagueux *et al.* (2011) concluded that NMFS's vessel speed restrictions lowered the risk of lethal vessel strikes of right whales by 39% in the SMA in waters off Florida/Georgia (considering only the first season in which SMAs were in effect). Wiley *et al.* (2011) estimated that the speed restrictions in SMAs in waters off New England (considering the first season, only) reduced the risk of fatal strikes of right whales by 57%. In analysis that quantified vessel speeds used in all SMAs in a four-year period after the rule went into effect and using expanded speed/risk models, one study estimated that the 2008 vessel speed rule reduced the risk of lethal vessel collisions with right whales by 80–90% (Conn and Silber, 2013).

NMFS knows of no information, data, or reports that would contradict the findings of the studies on which the original 2008 rule was based or that would contradict the peer-reviewed studies published since the rule went into effect. As such, the rationale for the basis of the rule remains intact.

Vessel Speed Restrictions Through Proposed and Final Rulemaking

NMFS's 2008 final rule to restrict vessel speeds in certain locations and at certain times along the U.S. Atlantic seaboard incorporated a number of changes relative to the related 2006 notice of proposed rulemaking (71 FR 36304) based on public and interagency comments. These changes included a reduction in the geographic extent of SMAs to limit economic impacts upon the regulated community, changes to the DMA program, and the addition of a December 8, 2013 expiration date. The expiration date was added because concerns were voiced regarding empirical certainty about the ''manner in which ships and whales interact and the relationship of speed and other factors to whale injuries and mortalities'', *i.e.,* the expected behavior (*e.g.,* avoidance) of a whale at or immediately prior to the time of a strike and the response of whales to vessels at various speeds.

In its 2008 final rule, NMFS indicated that it would ''to the extent possible, with existing resources [. . .] synthesize existing data, gather additional data, or conduct additional research,'' review the economic consequences of the rule, and determine what further steps to take regarding this rule. At the same time, NMFS also indicated that a determination regarding the effectiveness of protective measures in preventing vessel strikes of right whales—*i.e.,* ''proving a negative,'' or attributing the absence of a ship strike incident to speed restrictions—with statistical rigor would require many years of data collection.

In anticipation of the rule's expiration, NMFS compiled the best available data on this matter including the information on which the 2008 rule was based. NMFS also synthesized and reviewed empirical studies that were conducted since the rule went into effect, some of which provided analysis of the rule itself, and revised and improved its economic impact estimates. Based on this information, NMFS prepared and sought public comment on a June 6, 2013, proposed rule (78 FR 34024, June 6, 2013) to remove the sunset provision. In its June 6, 2013 proposed rule, NMFS also sought comment on issues that it may consider addressing in future rulemaking.

Navigational safety is of vital importance. Human safety and the safety of a vessel and its cargo should not be compromised under any circumstances. NMFS acknowledges that the operation of a vessel is a complex undertaking and that certain sea and weather conditions require added speeds to provide adequate vessel steerage. For this reason the 2008 rule provided for an exception whereby a vessel operator, at his/her discretion, may exceed the 10-knot speed limit to ensure navigational safety when sea conditions warrant higher speeds. This final rule does not alter that exception.

Comments on the Notice of Proposed Rulemaking and Responses

With respect to the proposed removal of the sunset provision, NMFS specifically requested comments and information from the public on three topics: (a) Removing the sunset provision contained in the existing regulations; (b) whether the final rule should include an extension of the sunset provision, and the time frame that would be appropriate for such an extension; and (c) information that may help identify the studies needed to verify the rule's efficacy, including the specific metrics to be used, and the amount of time needed to determine if the rule is effective in protecting and recovering the North Atlantic right whale population over the long term. In the notice, NMFS also sought information about modifications that would improve the effectiveness of the existing regulations that could be considered in future rulemakings.

In response to this request NMFS received a total of 145,879 comments on the June 6, 2013, proposed rule. Most comments were submitted via the government comment Web site, but some were provided directly to NMFS by electronic and U.S. postal mail. All comments have been compiled and posted at *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0058.* Of the comments received, 73,560 were in the form of a petition signed by members of an organization; 71,126 were from individual members of four organizations who co-signed a form letter; and 659 submissions contained individual comments from members of one of those organization. These four organizations compiled and submitted the petition, the co-signed letter, and individual member comments. Of the remainder of the comments, 483 were submitted directly to the comment Web site by non-affiliated individuals; 21 came from ports and pilot association representatives; 11 from environmental organizations (other than the ones noted above); seven from industry associations; six representing state or federal agencies or their affiliates; three from commercial whale-watch or ferry companies; two from public aquariums; and one from a commercial fishing association.

A total of 145,840 commenters expressed general support for the content of the rule and/or an elimination of the rule's sunset provision. Two commenters indicated that the rule should expire in December 2013 as set forth in the October 2008 final rule. Several commenters expressed a preference for the rule expiring, but also indicated that establishing a new sunset date was acceptable. Of those providing specific or detailed comments, 33 indicated that the sunset provision should be removed with no new expiration date set; 16 commenters indicated that a new termination date should be established but did not specify when it should occur; and 14 indicated the rule should have a new sunset date of five or less years. Fifty-nine commenters suggested various modifications to enhance the effectiveness of the rule in future rulemaking; and four provided new data or analysis that assessed specific aspects or components of the existing rule.

In the text below, we provide a general summary of the comments, recommendations, and issues raised that relate to the request for information and comment regarding this rulemaking, and provide responses to them.

Comments regarding the studies and scientific bases for the rulemaking: Right whale occurrence, distribution, demographics, and population size; and the relationship between vessel speed

and the probability of fatal whale/vessel collisions.

Comment 1: Several commenters questioned the validity of the studies and the data cited in the proposed rule (and in the previous rulemaking on this matter) with regard to the size and status of the North Atlantic right whale population, statements regarding its growth rates, whether ship collisions are a major threat to North Atlantic right whales, and the use of vessel speed limits to reduce the threat. Some commenters offered critiques of the various statistical and modeling studies published in peer-reviewed journals used to assess the relationship between vessel speed and the threat of ship strikes and/or indicated that NMFS had not established that vessel speed restrictions were an effective way to reduce the threat of vessel collisions with right whales.

Response: NMFS examined the best available scientific information on the North Atlantic right whale population size, trends in population size, productivity, and demographics, and threats to the population in determining that the use of speed restrictions are an effective means to reduce the likelihood and severity of ship strikes. NMFS knows of no data, reports, or peer-reviewed published studies that would contradict the findings of the studies on which this rule is based.

Information on various aspects of North Atlantic right whale natural history, population size, and growth rates is derived from peer-reviewed documents and databases, or has been published in peer-reviewed journals. NMFS believes that this information is credible and that it provides a scientifically sound basis for this action. A brief summary of this information is provided in the preamble to this final rule and appears in other sources including Waring *et al.* (2013), NMFS Proposed (NMFS, 2006; 71 FR 36304; June 26, 2006) and Final Rules (NMFS, 2008; 73 FR 60173, October 10, 2008) on the matter, and in NMFS (2005) which are incorporated here by reference.

Locations of Vessel Struck Right Whales

Comment 2: Some commenters suggested that right whale vessel strike-related deaths occur more frequently in some locations than in other locations or that right whale vessel-strike deaths do not occur at all in some areas. Therefore they proposed that seasonal speed restrictions should be limited in some areas. In particular, one commenter indicated that documented vessel collisions with right whales have not occurred in waters off South Carolina. Another indicated the same was true for waters off Virginia.

Response: Historic and recent records indicate that fatal vessel strikes of right whales can occur throughout the species' range, i.e., in nearly all coastal waters of eastern Canada and the United States (Laist *et al.,* 2001; Jensen and Silber 2003; Vanderlaan and Taggart, 2007; Vanderlaan *et al.,* 2009; van der Hoop *et al.,* 2013; Henry *et al.,* 2012; Waring *et al.,* 2013). Whereas records of known right whale vessel collision-related deaths may be absent or few in a particular (narrowly defined) geographic area in certain (limited) periods, it is clear that collisions involving vessels and right whales can occur in any location where vessel operations and right whales co-occur. Not all deaths are detected or reported because surveys for carcasses are not systematic in all areas or times of the year, and because carcasses may drift to sea or decompose before detection. Therefore, few or infrequent documented instances of known vessel strike-related deaths in a particular area does not necessarily indicate that deaths are completely absent there or that the risk of strikes does not exist.

One recent study concluded that fatal collisions involving all large whale species are most prevalent in waters along the U.S. mid-Atlantic states (van der Hoop *et al.,* 2013), and another concluded that North Atlantic right whales are most vulnerable to vessel-strike mortality in the southern portions of its range (e.g., waters off Georgia and Florida) (Vanderlaan *et al.,* 2009).

Vessel Speed and the Probability of Lethal Strikes of Large Whales

Comment 3: A number of commenters questioned (and offered specific critiques) of the data, reports, and studies reported in peer-reviewed scientific literature on the relationship between vessel speed and lethal collisions with large whales and other large marine vertebrates.

Response: While the critiques of the peer-reviewed literature provided by commenters may be open to discussion in the scientific literature, NMFS knows of no specific data, analysis, studies, or reports that would refute or contradict the existing literature. Although the link between vessel speed and the likelihood of fatal collisions with whales was first proposed as recently as the early 2000s, a growing body of literature on this subject is confirming the relationship between vessel speed and the death of a struck whale. NMFS regards these studies and the existing scientific literature represents the best available science on this matter. In addition, NMFS believes that the empirical results discussed above and described in the proposed rule and related documents, and the analysis conducted since the rule went into effect, are ample justification for imposing vessel speed restrictions to minimize the risk of lethal strikes of right whales.

Moreover, some commenters on the June 2013 proposed rule provided new analysis and data from studies that, in their view, supported the use of speed restrictions to reduce fatal collisions with right whales. In each case, these analyses addressed aspects of the 2008 vessel speed rule and represented the first time these results were presented publicly.

One set of comments included results of a comparison of the rate and locations of fatally struck right whales in all active SMAs (at the times they were in effect) to the number of known vessel collision-related right whale deaths in and near those same areas prior to the rule going into effect. Given that no fatal vessel strike-related right whale deaths occurred in or near active SMAs since the rule went into effect, the commenter concluded that this time span is nearly twice the longest interval between subsequent known vessel collision fatalities in these same areas in an 18-year study period prior to adoption of the rule (*http://www.regulations.gov/#!documentDetail;D=NOAA-NMFS-2012-0058-0530*).

Another set of comments that were accompanied by a manuscript prepared for publication compared the occurrence and distribution of known vessel-strike deaths of all large whale species in U.S. coastal waters in periods before and after the rule went into effect. The authors concluded that fatal vessel collisions of large whales were 5.4 times greater outside areas that include NMFS's vessel speed restriction zones than they were within those areas (*http://www.regulations.gov/#!documentDetail;D=NOAA-NMFS-2012-0058-0537*).

The results of a risk reduction modeling study of right whale distribution and vessel speeds recorded in waters in and near the Norfolk, VA, SMA were provided with one set of comments (*http://www.regulations.gov/#!documentDetail;D=NOAA-NMFS-2012-0058-0536*). These commenters observed a significant decrease in vessel speeds but no correlating decrease in risk to right whales within this SMA. The authors estimated a significant decrease in risk of fatal right whales vessel strikes if the SMA was (hypothetically) expanded from 20 nm to 30 nm. They indicated that the

expanded area would include habitat more often used by right whales.

A fourth set of comments included results of a study that examined the rates of severe and moderate injuries inflicted by strikes from vessel propellers, of all vessel sizes, both before and after NMFS's 2008 final rule went into effect. The authors concluded that in a 29-year period prior to December 2008, 69% of right whales struck by vessels 65 feet or greater in length resulted in the death of the whale, whereas 25% of struck whales died in the period after the rule was established. The study's authors indicate that these results suggest that vessel speed limits have increased the rate of survivability from a propeller strike (*http://www.regulations.gov/#!documentDetail;D=NOAA-NMFS-2012-0058-0516*). These authors also observed that instances existed in which right whales died when struck by vessels in the 40–65 foot class; but death occurred in just two of the eight cases studied.

Vessel Speed and Vessel Operations: Loss of Vessel Maneuverability at 10 Knots

Comment 4: Nine commenters indicated that large vessels lose steerage at low speeds, and that navigational safety was at risk at speeds of 10 knots or less, particularly in adverse wind or sea conditions. Comments from some, including vessel pilots, indicated that adequate maneuverability was particularly important when negotiating a port entrance or channel. In particular, several commenters argued that navigation is compromised in certain areas and suggested that NMFS ''exclude federally-maintained dredged channels and pilot boarding areas (and the immediately adjacent waters) for ports from New York to Jacksonville'' from the vessel speed restrictions—an approximate aggregate total area of 15 square miles.

Response: As noted above, NMFS regards navigational safety as a matter of utmost importance and believes that under no circumstances should human safety or the safety of a vessel or its cargo be jeopardized. NMFS acknowledges that under certain sea and weather conditions additional steerage might be acquired by added speeds. For this reason the 2008 rule provided for an exception whereby a captain at his/her discretion may exceed the 10-knot speed limit to ensure navigational safety when sea conditions warranted higher speeds. This final rule does not alter that exception.

However, NMFS also notes that mandatory or advisory vessel speed restrictions now exist in a number of locations, worldwide, and have been established for a variety of reasons and under various environmental circumstances. While most of these restrictions or advisories have been in effect for a number of years, involving thousands of voyages, NMFS is not aware of any reported incidents of loss of steerage or diminished navigational safety resulting from limited vessel speeds.

Among the vessel speed restriction measures already in effect are recommended speed limits of 12 knots or less within 40 nm of the entrances to the ports of Los Angeles/Long Beach and San Diego to reduce particulate matter emissions. In 2012 alone, vessels entering Los Angeles/Long Beach made over 3,400 trips (made by 234 different shipping companies) involving speeds of 12 knots or less at distances of 40 nm (and over 3,900 trips of at least 20 nm) (*http://www.polb.com/civica/filebank/blobdload.asp?BlobID=9434*). Recommended speeds of 13 knots or less for nearly the entire length of the Mediterranean Sea, came before the International Maritime Organization, the recognized international authority on navigational safety, in 2007 (Silber *et al.,* 2012b), and these speed advisories now exist in some portions of the Mediterranean Sea to minimize vessel strikes of several large whale species. This area is one of the most heavily-used shipping areas in the world where well over 100,000 trips are made each year.

Additional speed limits exist. Among these, the Maritime Administration requires that liquefied natural gas carriers travel at 10 knots or less in their approaches to terminals near Boston when right whales are in the vicinity (NMFS, 2007a; NMFS, 2007b; vessels are asked to travel 5 to 10 knots in approaches to most U.S. ports to allow port pilots to safely embark and disembark; all commercial cruise ships entering Glacier Bay National Park, Alaska, are subject to 10-knot speed restrictions; the United States Coast Guard (USCG) has established speed limits ranging from 5–10 knots in some river and port entrances, including near the Norfolk Naval Station to enhance national security (*e.g.,* 66 FR 53712; 67 FR 41337; 68 FR 2201), and has issued speed advisories of 10 knots or less for two National Marine Sanctuaries and surrounding waters off the coast of California; and five-knot speed restrictions applying to all vessels were imposed in 2007 in numerous ports and port entrances throughout most of Hong Kong harbor and neighboring waters to enhance navigational and human safety (Hong Kong Special Administrative Region, 2007).

In response to the requirements of the 2008 vessel speed restriction rule alone, tens of thousands of trips have been made in U.S. waters at or under speeds of 10 knots (Nathan Associates Inc., 2012; Conn and Silber, 2013). To our knowledge, there have been no reports of loss of maneuverability resulting from speed restrictions at any of the locations or circumstances described above; and these are situations that likely involve a wide array of sea, weather, and port configuration conditions.

NMFS notes the importance of coastal areas as right whale habitat and the increased risk posed by vessel traffic in the same areas. Over the last few decades, most right whale sightings in waters off the southeast and mid-Atlantic states have occurred within 30 nm of the shore. These are areas where most vessel traffic also occurs. In a comparison of the locations of fatally-struck right whales to vessel traffic density along the U.S. east coast and port entrances, Kraus and Rolland (2007) concluded that the ''results indicate that ship-struck carcasses are found close to shipping lanes and in dense traffic areas, both in high-use right whale areas along migratory corridors (Knowlton, 1997; Knowlton and Kraus, 2001)'' suggesting that relaxing speed restrictions in dredged shipping channels may increase the probability of a vessel strike in these areas.

NMFS will treat the request to exclude vessels using federally-maintained dredged port entrance channels from the speed restrictions as a petition for rulemaking under the Administrative Procedure Act, though this is not required nor is it NMFS' normal practice. We plan to issue a Notice in the **Federal Register** announcing receipt of the petition, along with a concise statement of the request and seek comment on the request. If NMFS decides to proceed with the suggested rulemaking, we will notify the petitioner within 120 days, publish a notice in the **Federal Register** of our decision to engage in rulemaking in a prompt manner, and thereafter proceed in accordance with the requirements for rulemaking. If NMFS decides not to proceed with the petitioned rulemaking, we will notify the petitioner, provide a brief statement of the grounds for the decision, and publish in the **Federal Register** a notice of our decision not to proceed with the petitioned action.

Economic Impact Analysis

Comment 5: Four commenters raised concerns regarding the economic impacts of the rule. One commenter indicated that the economic impact assessments that underlie this rulemaking were inadequate, particularly with regard to impacts to land-based intermodal transport and the diversion of goods to foreign ports. One commenter indicated that the underlying economic analysis should further quantify the societal benefit of each right whale death prevented by the rule, and that it did not completely consider costs to the government incurred by, for example, the commitment of personnel time to the analysis, creation, and enforcement of seasonal and dynamic management areas. One set of comments indicated that the analysis failed to indicate that a New England high speed ferry business would be put out of business if the current voluntary measures in DMAs were to be made mandatory.

Response: The comment regarding impact to intermodal transport of goods or from port diversions did not include any information or data to support the view that the estimates were low, that would refute the findings of the economic impact study, or that might prompt a re-consideration of this study. Questions with regard to impacts to intermodal transport and possible port diversions are addressed by Nathan Associates Inc. (2012; pages 18–19), which included the use of a widely established tool developed by the U.S. Maritime Administration that includes such parameters as costs/benefits to firms that provision deep-draft port industries, expenditures by firms stocking the supplying firms, effects on consumer spending that is generated by changes in labor income accruing to the workers in deep-draft port industries, and employment in impacted supplying businesses.

Regarding the comment about the cost of preserving living whales (or the societal cost of a dead whale), no specific information was provided in the comment to indicate how to best go about doing this. As to the economic impacts of a mandatory DMA program, NMFS is not considering such action at this time. NMFS will consider these comments when it re-assesses the rule and possible modifications to the rule.

Mariner Outreach and Education

Comment 6: Several commenters noted the importance of mariner outreach and awareness programs operated by NMFS and its partners and commended NMFS on these efforts. Two commenters who were not in favor of removing the sunset clause recognized the importance and success of outreach efforts to the maritime community. One commenter recommended developing outreach programs for owners of vessels less than 65 feet in length.

Response: NMFS shares the view that such efforts are important and expects to continue the programs as resources allow.

Removing or Reinstating the Sunset Provision

Comment 7: A majority of the comments submitted by the public offered guidance regarding the expiration provision of the existing rule. The comments represented a range of views.

Most commenters advocated removing the sunset provision completely and a number indicated that a new expiration date should be established. Only two commenters indicated the rule should expire in December 2013 as currently required by the existing rule. Specifically, comments on this topic were as follows (numbers in brackets indicate the number of comments received):

- Allow the current rule to lapse in December 2013 (2);
- Remove the sunset provision, without re-instituting a new expiration date (145,840 commenters; this number includes petition and form letter co-signers, organization and organization members' comments, and all individual comments);
- Reestablish a new sunset date at
  - no time specified (16);
  - five years, or not to exceed 5 years (14); and
  - more than five years (1).

Most commenters who indicated that the sunset clause should be removed also discussed the importance of the rule in protecting right whales and some noted the importance of conserving marine ecosystems as a whole. Four commenters argued that NMFS's use of the sunset provision was unprecedented in rulemaking, that including this provision was arbitrary and capricious, or that the timeframe selected was arbitrary. Conversely, one commenter indicated that any action to remove the sunset provision would be arbitrary, capricious, and unlawful. Another indicated that establishing the sunset date in the 2008 rule was done with a lack of transparency. Two commenters indicated that establishing a new sunset provision would require time-consuming and costly future rulemaking to again propose to remove the provision. Regardless of whether they favored eliminating or establishing a new sunset provision, a number of commenters requested that NMFS conduct periodic reviews of the rule to retain or increase biological protection of right whales.

Response: Of those commenters who advocated establishing a new sunset date, none provided information about, or rationale for, how their new dates were selected. None offered suggestions on the data needed to make the determination about a particular expiration date. Instead, those commenters tended to describe the need for additional time in general or qualitative terms without specific recommendations or rationale for an alternative sunset date.

Based on the existing evidence in support of retaining vessel speed restrictions as a means to reduce the threat of fatal vessel collisions with right whales, new analysis provided during the public comment period in support of the vessel speed restrictions, and an absence of a basis for eliminating the speed rule or implementing a new sunset provision, NMFS has decided to remove the sunset provision with this final rule.

Periodic Review of the Rule

Comment 8: A number of commenters stressed the importance of ongoing review of the rule. Indeed, the need for periodic review was the primary justification for many of those recommending that the rule should have a new expiration date. Some expressed concern that assessments of the rule's efficacy likely would not occur without a renewed expiration date.

Response: As noted above, NMFS intends to review the costs and benefits of this rule on a periodic basis, as required by Executive Order (EO) 13563. While doing so is not predicated on the rule expiring at a particular time, NMFS intends to conduct periodic reviews of this rule and to modify, or repeal, aspects of this rule, as appropriate, and after public notice and comment, and expects to conduct a review no later than five years from the publication of this final rule. With regard to a number of aspects of this rule, assessments and refinements will be made on an ongoing basis. This is particularly the case with regard to possible modifications that will be considered based on public comments described here and in related internal and peer-reviewed studies.

Measures of Effectiveness

Comment 9: Among other things, the proposed rule requested ". . . input on the data, metrics, and time needed to . . ." assess the rule's effectiveness.

Commenters responding to this request tended to favor a new sunset date and stated that this was needed to, for example, ''. . . allow time to assess effectiveness . . .'' or to provide time for ''. . . additional analysis and data collection'' to determine that the rule was reducing vessel collisions.

Response: With one exception, no commenter proposed metrics, data, or analysis that might be used to make such an evaluation of effectiveness. Therefore, whereas a number of commenters indicated that additional time was needed to gather information to establish the effectiveness of the rule, no specific information was provided to indicate how this might be accomplished. The one exception was a commenter who suggested that the ''average annual death rate of right whales in or near management areas'' would provide ''a valuable measure.'' Some commenters offered suggestions about additional or ongoing monitoring studies that might be conducted (as identified below), but none indicated how these studies might contribute to evaluating the rule's effectiveness. Nonetheless, NMFS plans to continue its own periodic assessments of the rule.

As noted in the June 6, 2013, proposed rule, NMFS expects to continue monitoring right and other large whale death rates; determine causes of whale deaths when possible; monitor right whale population size, demographics, and such things as calving and recruitment rates; monitor vessel operations in response to the vessel speed restrictions; attempt to further assess the relationship between vessel speed and the likelihood of ship strikes of whales; and evaluate new and historic whale sighting records. As indicated elsewhere in this final rule and in the June 2013 proposed rule, such analysis eventually may lead to subsequent rulemaking to modify or refine certain aspects of the regulation (*e.g.,* possible changes to the locations, dimensions, or duration of management areas, or termination of parts or all of the rule's provisions).

Monitoring the Rule and Right Whales

Comment 10: NMFS's proposed rule also requested public comment on its ongoing monitoring activities. Those responding to this portion of NMFS's request, a total of 12 commenters, suggested primarily a range of monitoring studies that would facilitate an increased understanding of right whale occurrence, distribution and movement patterns. The studies suggested by the public were (each of these suggested studies was made by three or fewer commenters; the majority was suggested by one commenter):

- Monitor vessel activities and continue to fine those vessels that do not comply;
- Compare the number of whale deaths in entangling fishing gear to those killed by collisions with ships;
- Retrospectively analyze oceanographic features to identify determinants of right whale occurrence and shift in occurrence and habitat use;
- Survey right whale habitats and conduct photo-identification studies;
- Conduct satellite-linked tagging studies to determine migration routes;
- Study the use of active acoustics (*e.g.,* SONAR) to detect whale locations;
- Improve and implement right whale monitoring technologies;
- Continue ongoing right whale population and mortality monitoring and necropsy response efforts; and
- Analyze data related to the carcasses of all whales determined to have been struck by ships to evaluate the probability that they were struck in or near established management zones and by vessels subject to the rule (*i.e.,* those >65 feet in length) and ensure necropsy protocols and related analyses are as complete as logistical constraints allow to:
  - determine whether the injuries were consistent with being struck by a vessel 65 feet or longer,
  - evaluate the extent to which sustained ship strike injuries could have limited the whale's mobility before death,
  - estimate the date of the whale's death based on carcass decomposition and other relevant factors, and
  - estimate carcass drift for the period between time of death and time of carcass discovery to determine the approximate location of the whale when it died.

Response: NMFS notes that while these various studies may increase understanding of right whale biology and may ultimately lead to an improved level of protection for right whales, in and of themselves, these recommended studies would not necessarily lead to an assessment of effectiveness of the existing rule. Commenters offering these suggestions did not, for example, indicate how data gathered in the course of conducting this research might be linked to making assessments of the rule's efficacy. Nonetheless, NMFS intends to evaluate the feasibility (given limited resources) and utility of these studies as part of a suite of other ongoing studies, to the extent possible, use their results in assessing the efficacy of the rule.

Suggested Modifications to the Rule

Comment 11: In its June 2013 proposed rule, NMFS also requested public comment on possible future ''. . . modifications that would improve the effectiveness of the rule''. A total of 47 commenters provided suggestions about ways to modify the provisions of the existing rule. Among the comments received, support was indicated, for example, for eliminating some SMAs, creating new SMAs, changing the size or timing of SMAs, lessening the requirements within some SMAs, applying the restrictions to additional vessel types, and with regard to various aspects of the DMA program.

Suggested general modifications were to (each of the following was suggested by fewer than 10 commenters; most were made by one commenter):

- Expand right whale critical habitat;
- Take urgent steps to reduce right whale entanglement in commercial fishing gear;
- Update, adaptively manage, and expand if necessary, the temporal and spatial restrictions of SMAs (and DMAs) to minimize whale/vessel collisions;
- Repeal the rule if it is determined to be ineffective;
- Make use of routing measures in lieu of speed restrictions; and
- Make changes to aspects of the rule as new data on right whale occurrence is acquired.

Some commenters suggested modifying the size, shape, dimensions, locations, conditions, or timing of SMAs such that

- The timing is changed:
  - in all SMAs from seasonal to year-round;
  - in all SMAs between the Chesapeake Bay and New Jersey from seasonal to year round;
  - taking into account shifts in right whale occurrence;
  - by making the ''southeast U.S.'' SMA effective from 1 December to 30 March rather than the current 1 November through 30 April period; and
  - by tailoring them to each port to account for the relative risk to right whales at each location.
- The boundaries or locations of SMAs are changed such that they are:
  - eliminated from port approaches;
  - geographically extended in waters off the mid-Atlantic states from 20nm to 30nm from shore;
  - geographically extended in waters off the Chesapeake Bay from 20nm to 30nm from shore;
  - removed from the South Carolina coast; and
  - implemented in Sanctuaries and other locations to protect other marine mammal species and sea turtles.

- New or expanded SMAs are established:
  - off the coast of North Carolina;
  - off Race Point, Massachusetts;
  - in areas where DMAs have been occurred repeatedly in
    - the Gulf of Maine; and
    - Jeffreys Ledge, Jordan Basin, and Cashes Ledge [off New England].
- Conditions within SMAs are modified such that:
  - vessels operating with a pilot on board are exempted from speed restrictions;
  - NMFS is able to temporarily lift speed restrictions if right whales are known to be absent in an SMA;
  - all federally-mandated dredged channels and pilot boarding area (and the immediately adjacent waters) for port from New York to Jacksonville are excluded; and
  - restrictions off South Carolina are lessened.

Some commenters suggested changing the vessel size threshold to which speed restrictions currently apply such that restrictions would apply to:

- vessels smaller than 65 feet (no specified length);
- vessels 40 feet and greater;
- vessels 40–65 foot range (as well as 65 feet and greater);
- vessels 300 gross tons and greater; and
- all vessels.

With regard to the dynamic management area program, commenters suggested that DMAs should:

- not be used;
- be used and changed from voluntary to mandatory;
- be used but remain voluntary;
- be used in the Chesapeake Bay region in lieu of SMAs; and
- not be used in lieu of SMAs in migratory corridors along the coastal mid-Atlantic.

Some commenters indicated that sovereign vessels should:

- voluntarily reduce speeds and Federal activities should continue to be subject to ESA Section 7 consultations;
- adhere to the restrictions contained in the speed rule when not engaged in non-combat/non-emergency missions; and
- be subject to the same restrictions as other vessels.

Alerting systems for mariners should be developed and implemented using:

- mariner-reported whale sighting locations and applications for smart phones;
- sighting networks that involve marine mammal observers associated with offshore wind-industry development; and
- various technologies.

Response: NMFS appreciates having this information. It is not possible for NMFS to make changes such as these at this time (*i.e.,* with this final rule) because they were not the subject of our proposed rule to eliminate the sunset provision. As such they were not subject to legally required public review and comment. NMFS will need to analyze these suggestions more thoroughly to comply with the National Environmental Policy Act and other applicable laws. In its October 2008 final rule (73 FR 60173*, 60182*), however, NMFS indicated that it would

> . . . consider adjusting the regulations. Such actions would be taken through additional rulemaking. Measures that NMFS could consider may involve vessel size, vessel routing (*e.g.,* making recommended routes mandatory), vessel speed, making dynamically managed areas mandatory, and the size and duration of the areas where the restrictions apply.

Therefore, as previously stated and as required by Executive Order (EO) 13563, NMFS intends to periodically evaluate the efficacy of vessel speed restrictions to ensure they are attaining their intended objectives. This will also include evaluations of the existing provisions and, as necessary and if warranted, making amendments to those provisions through additional rulemaking.

Thus, NMFS intends to synthesize and review available data on such things including new and historical information on right whale occurrence and distribution, locations of known vessel collision-related deaths of right whales and other large whale species, vessel traffic patterns and speeds, and compliance with the existing regulation. Following this, NMFS may propose modifications to the current provisions of the existing rule. Recommended changes to the rule that were described here provide a number of options that are worthy of consideration. Any modifications, including those based on the results of studies currently ongoing and underway, would be subject to further analysis, NEPA requirements, public comment, and proposed and final rulemaking.

Conclusions and Next Steps

NMFS believes that the evidence and justification as indicated in its October 2008 final rule for establishing the vessel speed restrictions to minimize fatal vessel collisions of right whales remain valid and have not been refuted, and that data analysis and the growing body of literature since the rule was established support those conclusions. New data, including new analysis of existing data and new information provided during the public comment period, further support the validity of vessel speed restrictions to protect right whales, and no new information was provided that would contradict these findings. No known right whale deaths have occurred in speed restriction SMAs in the time since the restrictions were implemented. Therefore, NMFS believes that there is ample justification for a continuation of the speed restriction rule to contribute to the conservation and recovery of this endangered species.

In reviewing public comments received, NMFS notes that a large majority of the commenters indicated their support for eliminating the rule's sunset provision. NMFS also notes that comments in favor of a renewed expiration date did not provide bases or rational for selecting a particular date for re-establishing a sunset. There were also few, if any, indications regarding specific standards by which the rule might be measured or how NMFS might be reasonably expected to assess the rule's effectiveness within a specific time frame.

Most commenters opined, and NMFS agrees, that the rule should periodically be reviewed to assess its value in reducing the threat of vessel collisions with right whales, that the specific elements (e.g., size, duration, and location of SMAs) be reviewed to ensure they are appropriate to meet that objective and to ensure that the rule is cost-effective and not unduly burdensome to the regulated community. NOAA is required under Executive Order (EO) 13563 to conduct periodic reviews of the rule's costs and benefits. Data are routinely collected and new information and results from recent studies are emerging on an ongoing basis—this includes, for example, new information provided during the public comment period on NMFS's proposed rule. These results and data have been, and will continue to form, the basis for ongoing reviews of the rule and assessments of various aspects of the rule. As part of its plan for retrospective analysis under EO 13563, NMFS will synthesize, review, and report within the next five years on studies and information that might provide a characterization of a possible reduction in ship strike deaths, as well as mariner response to, and economic impacts of, the vessel speed restrictions. The report will include any recommendations to ensure the conservation value of the rule and that its requirements do not unduly burden affected entities. NMFS will seek public comment on the report and any

recommendations regarding the costs and benefits of the rule.

In sum, NMFS expects to continue its ongoing right whale population and vessel monitoring studies—while incorporating the types of studies suggested via public comment as appropriate and feasible—and make modifications to, or phase out if appropriate, the vessel speed restrictions.

Therefore, with this final rule NMFS is removing the sunset provision of the vessel speed restriction rule.

Classification

The Office of Management and Budget has determined that this final rule is significant for purposes of Executive Order 12866, but it does not qualify as economically significant.

This final rule does not have Federalism implications as that term is defined in Executive Order 13132.

This final rule contains a collection of information subject to the Paperwork Reduction Act (PRA). This obligation appears in section 224.105(c) and requires vessel captains to log deviations from the 10-knot speed limit when necessary for safe operations. Public reporting burden for logbook entries in the event of deviation from speed restrictions is estimated to average five minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. There is no additional cost to the affected public.

Notwithstanding any other provisions of the law, no person is required to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless the collection of information displays a currently valid Office of Management and Budget (OMB) control number.

Final Regulatory Flexibility Analysis

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS prepared the following Final Regulatory Flexibility Analysis (FRFA) in support of this final rule to remove an expiration date from the October 2008 final rule implementing vessel speed restrictions to reduce the threat of ship collisions with North Atlantic right whales. The FRFA describes the economic impact that this final rule will have on small entities.

This FRFA incorporates (a) the economic analysis prepared for the October 2008 final rule, which includes the information and analysis contained in the Final Environmental Impact Statement (FEIS), the Nathan Associates Inc. (2008) economic impact report, and the accompanying Regulatory Impact Review (RIR) for that final rule; (b) the updated and revised economic impact analysis contained in a Nathan Associates Inc. (2012) report being used for this final rule; and (c) the economic impacts summarized in the initial RFA (IRFA) for the June 2013 proposed rule to remove the sunset provision of the October 2008 final rule that implemented vessel speed restrictions (78 FR 34024). Copies of the IRFA and the RIR are available from NMFS, Office of Protected Resources (see ADDRESSES); the FEIS, the Economic Analysis for the FEIS, and the Nathan Associates Inc. reports (2008; 2012) are available at: *http://www.nmfs.noaa.gov/pr/shipstrike/*.

A description of the action, why it is being considered, the objectives of, and legal basis for this action are contained in the preamble to this final rule. This final rule does not duplicate, overlap, or conflict with other Federal rules.

Description and Estimate of the Number of Small Entities to Which the Final Rule Will Apply

The final rule affects operations of vessels that are 65 feet (19.8 m) or greater in overall length. Seven industries are directly affected by this rulemaking: commercial shipping, high-speed passenger ferries, regular-speed passenger ferries, high-speed whale watching vessels, regular-speed whale watching vessels, commercial fishing vessels, and charter fishing vessels. The number of small entities expected to be affected by this rule by industry are: 362 commercial shipping (with various vessel classifications), 297 commercial fishing, 40 charter fishing, 14 passenger ferry, and 22 whale-watching. Economic impacts are expected to be 0.04% of the annual revenue of small entities operating in the commercial shipping industry, 0.04% in commercial fishing operations, and 4.30% in charter fishing operations. No or minimal impacts are expected to ferry and whale-watching businesses. Additional information on small entities affected by this rule can be found on pages 29 through 36 and in Tables 5–1 through 5–7 of the Nathan Associates Inc. (2012) report.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

There are no compliance requirements other than the management actions contained in the final rule. Recordkeeping requirements associated with this final rule include logbook entries in the event of deviation from speed restrictions under the specified exception. These entries are estimated to average five minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Issues Raised by the Public Comments Regarding Economic Impacts

Only one public comment addressed economic impacts specific to small entities (additional comments and responses with regard to economic impacts are provided in the response to comments section of this rule) resulting from the proposed action to continue the provisions of the 2008 speed regulation final rule by removing the sunset provision. The commenter indicated that the economic analysis failed to indicate that a specific New England high speed ferry business would be put out of business if the current voluntary measures in DMAs were to be made mandatory.

Response: As indicated in the 2008 final rule implementing speed restrictions, compliance within DMAs is voluntary, *i.e.,* vessel operators are requested, but not required, to travel at 10 knots or less or route around designated DMAs. In this final rule to remove the sunset provision of the existing rule, NMFS is making no changes with regard to the DMA program. Thus, this economic concern would not apply to this final rule.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

In its 2008 final rule that implemented the speed regulation, NMFS carefully weighed the speed restriction provisions in light of right whale protection as well as the likely economic impact. As a result, NMFS tightly constrained in time and place seasonal management areas to correspond only to known right whale occurrence. The SMAs were made as small as practicable while still providing conservation value. In addition, the creation of a DMA program enabled NMFS to maintain minimally-sized SMAs, further reducing economic impact.

This final rule to remove the sunset provision does not alter any other aspect of the 2008 speed regulation. NMFS considered the no-action alternative and also solicited public comment on extending the sunset provision. The no-action alternative, while economically

preferable for some small entities, would lead to a lapse in the speed regulation and was rejected because NMFS determined the speed regulation is needed to reduce the threat of ship collisions with right whales. Public comments on establishing a new sunset date provided little or no justification for selecting the new date(s) being recommended or information on the means by which the regulation's effectiveness would be measured.

For more information, including other alternatives considered during the rulemaking for the 2008 speed regulation, see the Final RFA for the 2008 final rule (73 FR 60173, 60185; October 10, 2008).

In conjunction with a number of partners, NMFS has developed and implemented an extensive outreach program. Several commenters noted the success of this program. With enhanced knowledge of the provisions of this rule, mariners are armed with advanced knowledge of the times (that are consistent each year) and locations of SMAs. Therefore, adherence to the requirements within these zones can be successfully incorporated into advanced voyage planning. This eliminates any surprises or disruption of schedules and allows the scheduling of port arrivals and the scheduling of port-side services, thereby reducing or eliminating any costs associated with missed schedules or the scheduling of personnel, equipment or services.

As NMFS's proposed rule to remove the sunset provision indicated, the agency is conducting an analysis of the speed regulation to determine if modifications would be appropriate, but that those efforts are ongoing and have not been completed. However, NMFS solicited public comment on modifications that would improve the effectiveness of the current speed regulation, to be considered in the future. Some comments indicated that certain SMAs should be larger, others indicated that SMAs should be smaller, and still others suggested establishing new SMAs. NMFS will consider all public comments on modification in conjunction with the results of its own analysis, and may modify aspects of the regulation (e.g., size or timing of the SMAs) in future rulemaking. Any such changes would be subject to legally required notice and public comment and other applicable laws.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' A compliance guide was prepared for the existing 2008 final rule. Because no aspect of the 2008 rule is being changed, this guide still has application and will be sent to all holders of permits issued for U.S. northeast and southeast fisheries, ferry operators, whale watching vessel operators, and shipping companies. Guides will also be provided to port authorities, port pilots, and the USCG, and others as appropriate, for distribution to the maritime industry. In addition, copies of this final rule and guide are available from NMFS, Office of Protected Resources and on the Office of Protected Resources Web site (see ADDRESSES).

The NOAA Assistant Administrator for Fisheries finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this final rule. In the preamble for the 2008 final speed rule, NMFS committed to conduct additional evaluation of various aspects of the rule, including effectiveness and economic impacts. During the period since, NMFS followed through on those commitments. Taking into consideration the new information, NMFS published its proposed rule to remove the sunset provision on June 6, 2013, and invited public comment for 60 days. In order to give full and fair consideration to the significant number of public comments on the proposed rule (NMFS received approximately 145,000 comments during the public comment period, which ended on August 5, 2013), and in light of the recent two and a half-week government shutdown, NOAA could not issue a final rule before now. NOAA finds that the public interest requires that the sunset provision be removed effective December 8, 2013, to keep in place this important conservation measure to protect the endangered North Atlantic right whale. Any lapse in the speed regulation will increase the risk of a lethal collision of this highly endangered species in areas and times when right whale and vessel occurrences overlap. Moreover, because these speed restrictions have been in place for five years, and remain unchanged in this final rule, operators have already been operating in accordance with this final rule and will not need to change anything to come into full compliance with the speed restrictions. Waiving the delay in effectiveness ensures the status quo continues without any lapse.

List of Subjects in 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: December 4, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 224 is amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for 50 CFR part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.,*

■ 2. In § 224.105, paragraph (d) is revised to read as follows:

§ 224.105 Speed restrictions to protect North Atlantic Right Whales.

* * * * *

(d) No later than January 1, 2019, the National Marine Fisheries Service will publish and seek comment on a report evaluating the conservation value and economic and navigational safety impacts of this section, including any recommendations to minimize burden of such impacts.

* * * * *

[FR Doc. 2013–29355 Filed 12–6–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 236
Monday, December 9, 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 ENERGY

10 CFR Part 430

[Docket No. EERE–2013–BT–STD–0051]

RIN 1904–AD09

Energy Efficiency Program for Consumer Products: Energy Conservation Standards for General Service Lamps

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

ACTION: Notice of public meeting and availability of the Framework Document.

SUMMARY: The U.S. Department of Energy (DOE) is initiating this rulemaking and data collection process to consider new and amended energy conservation standards for products included in the definition of general service lamps (GSLs). To inform interested parties and to facilitate this process, DOE has prepared a Framework Document that details the analytical approach and preliminary scope of coverage for the rulemaking, and identifies several issues on which DOE is particularly interested in receiving comments. DOE will hold a public meeting to discuss and receive comments on its planned analytical approach and the issues it will address in this rulemaking proceeding. DOE welcomes written comments and relevant data from the public on any subject within the scope of this rulemaking. A copy of the Framework Document is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx?productid=82.*

DATES: *Meeting:* DOE will hold a public meeting on Tuesday, January 14, 2014 from 9:00 a.m. to 2:00 p.m. in Washington, DC.

DOE must receive requests to speak at the public meeting before 4:00 p.m., Wednesday, January 1, 2014. DOE must receive an electronic copy of the statement with the name and, if appropriate, the organization of the presenter to be given at the public meeting before 4:00 p.m., Wednesday, January 8, 2014.

Comments: DOE will accept written comments, data, and information regarding the Framework Document before and after the public meeting, but no later than January 23, 2014.

ADDRESSES: DOE plans to conduct the public meeting via webinar. You may attend the public meeting via webinar, and registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx?productid=82.*

Participants are responsible for ensuring their systems are compatible with the webinar software.

The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585–0121. Please note that foreign nationals planning to participate in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed. Please note that any person wishing to bring a laptop computer into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes.

Interested parties are encouraged to submit comments electronically. However, comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: GSL2013STD0051@ee.doe.gov.* Include docket number EERE–2013–BT–STD–0051 and/or regulatory identification number (RIN) 1904–AD09 in the subject line of the message. All comments should clearly identify the name, address, and, if appropriate, organization of the commenter. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Framework Document for General Service Lamps, Docket No. EERE–2013–BT–STD–0051 and/or RIN 1904–AD09, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. [Please note that comments sent by mail are often delayed and may be damaged by mail screening processes.]
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Instructions: All submissions received must include the agency name and docket number and/or RIN for this rulemaking. No telefacsimilies (faxes) will be accepted.

Docket: The docket is available for review at *www.regulations.gov,* and will include **Federal Register** notices, framework document, notice of proposed rulemaking, public meeting attendee lists and transcripts, comments, and other supporting documents/materials throughout the rulemaking process. The regulations.gov Web page contains simple instructions on how to access all documents, including public comments, in the docket. The docket can be accessed by searching for docket number EERE–2013–BT–STD–0051 on the regulations.gov Web site. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

For information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121.

Telephone: (202) 287–1604. Email: *GSL@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163, (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering major household appliances (collectively referred to as ''covered products'').[2] EPCA authorizes DOE to establish technologically feasible, economically justified energy conservation standards for covered products that would be likely to result in significant national energy savings. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) Subsequent amendments expanded Title III of EPCA to include additional consumer products, including GSLs—the products that are the focus of this document. In particular, amendments to EPCA in the Energy Independence and Security Act of 2007 (EISA) directed DOE to conduct two rulemaking cycles to evaluate energy conservation standards for GSLs. (42 U.S.C. 6295(i)(6)(A)–(B))

For the first rulemaking cycle, EPCA, as amended by EISA, directs DOE to initiate a rulemaking no later than January 1, 2014 to evaluate standards for GSLs and determine whether exemptions for certain incandescent lamps should be maintained or discontinued. (42 U.S.C. 6295(i)(6)(A)(i)) The scope of the rulemaking is not limited to incandescent lamp technologies. (42 U.S.C. 6295(i)(6)(A)(ii)) The EISA amendments to EPCA further require that if standards are to be established for GSLs, a final rule must be published by January 1, 2017 with a compliance date at least 3 years after the date on which the final rule is published. (42 U.S.C. 6295(i)(6)(A)(iii)) Additionally, the requirements direct DOE to consider phased-in compliance dates based on the impact of amending standards on manufacturers, retiring and repurposing existing equipment, stranded investments, labor contracts, workers, raw materials, and time needed to revise sales and marketing strategies. (42 U.S.C. 6295(i)(6)(A)(iv))

Further, for this first cycle of rulemaking, the EISA amendments provide that DOE must consider a minimum standard of 45 lumens per watt (lm/W). (42 U.S.C. 6295(i)(6)(A)(ii)) If DOE fails to meet the requirements of 42 U.S.C. 6295(i)(6)(A)(i)–(iv), or the final rule from the first rulemaking cycle does not produce savings greater than or equal to the savings from a minimum efficacy standard of 45 lm/W, sales of GSLs that do not meet the minimum 45 lm/W standard beginning on January 1, 2020 will be prohibited. (42 U.S.C. 6295(i)(6)(A)(v)) Additionally, state preemption requirements are specified for California and Nevada. Namely, beginning January 1, 2018, no provision of law shall preclude these states from adopting: (1) A final rule adopted in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv); (2) the minimum efficacy standard of the backstop requirement (45 lm/W) if no final rule was adopted; or (3) for the state of California, any California regulations related to the covered products adopted pursuant to State statue in effect as of the date of enactment of EISA. 42 U.S.C. 6295(i)(6)(A)(vi)

The EISA-prescribed amendments direct DOE to initiate a second rulemaking cycle by January 1, 2020 to determine whether standards in effect for GSILs should be amended with more stringent requirements and if the exemptions for certain incandescent lamps should be maintained or discontinued. (42 U.S.C. 6295(i)(6)(B)(i)) For this second review of energy conservation standards, the scope is not limited to incandescent lamp technologies. (42 U.S.C. 6295(i)(6)(B)(ii)) The EISA amendments require that if standards are to be amended for GSILs, a final rule must be published by January 1, 2022 with a compliance date at least 3 years after the date on which the final rule is published. (42 U.S.C. 6295(i)(6)(B)(iii)) These amendments also direct DOE to consider phased-in compliance dates for the second round of review based on the impact of amending standards on manufacturers, retiring and repurposing existing equipment, stranded investments, labor contracts, workers, raw materials, and time needed to revise sales and marketing strategies. (42 U.S.C. 6295(i)(6)(B)(iv))

Additionally, this rulemaking satisfies the requirements under 42 U.S.C. 6295(m)(1) for DOE to review the existing standards for medium base compact fluorescent lamps (MBCFLs), as compact fluorescent lamps are included in the definition of GSL. The Energy Policy Act of 2005 (EPAct 2005) amended EPCA by establishing energy conservation standards for MBCFLs. Under 42 U.S.C. 6295(m)(1), within 6 years after issuance of any final rule establishing or amending a standard, DOE is required to publish a notice determining whether to amend such standards. If DOE determines that amendment is warranted, DOE must also issue a notice of proposed rulemaking including new proposed energy conservation standards by that same date. (42 U.S.C. 6295(m)(l))

DOE prepared the Framework Document to explain the relevant issues, analyses, and processes it anticipates using when considering new and amended energy conservation standards for products included in the definition of GSLs. The focus of the public meeting noted above will be to discuss the information presented and issues identified in the Framework Document. At the public meeting, DOE will make presentations and invite discussion on the rulemaking process as it applies to GSLs. DOE will also solicit comments, data, and information from participants and other interested parties.

DOE is planning to conduct in-depth technical analyses in the following areas: (1) Engineering; (2) energy use; (3) product price; (4) life-cycle cost and payback period; (5) national impacts; (6) manufacturer impacts; (7) emission impacts; (8) utility impacts; (9) employment impacts; and (10) regulatory impacts. DOE will also conduct several other analyses that support those previously listed, including the market and technology assessment, the screening analysis (which contributes to the engineering analysis), and the shipments analysis (which contributes to the national impact analysis).

DOE encourages those who wish to participate in the public meeting to obtain the Framework Document and to be prepared to discuss its contents. A copy of the Framework Document is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx?productid=82.*

Public meeting participants need not limit their comments to the issues identified in the Framework Document.

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

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Pub. L. 112–210 (Dec. 18, 2012).

DOE is also interested in comments on other relevant issues that participants believe would affect energy conservation standards for these products, applicable test procedures, or the preliminary determination on the scope of coverage. DOE invites all interested parties, whether or not they participate in the public meeting, to submit in writing by January 23, 2014, comments and information on matters addressed in the Framework Document and on other matters relevant to DOE's consideration of coverage of and standards for GSLs.

The public meeting will be conducted in an informal, facilitated, conference style. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by U.S. antitrust laws. A court reporter will record the proceedings of the public meeting, after which a transcript will be available for purchase from the court reporter and placed on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx?productid=82.*

After the public meeting and the close of the comment period on the Framework Document, DOE will collect data, conduct the analyses as discussed in the Framework Document and at the public meeting, and review the public comments it receives.

DOE considers public participation to be a very important part of the process for determining whether to establish or amend energy conservation standards and, if so, in setting those standards. DOE actively encourages the participation and interaction of the public during the comment period at each stage of the rulemaking process. Beginning with the Framework Document, and during each subsequent public meeting and comment period, interactions with and among members of the public provide a balanced discussion of the issues to assist DOE in the standards rulemaking process. Accordingly, anyone who wishes to participate in the public meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586–2945, or via email at *Brenda.Edwards@ee.doe.gov.*

Issued in Washington, DC, on December 2, 2013.

Kathleen B. Hogan,

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

[FR Doc. 2013–29166 Filed 12–6–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0981; Directorate Identifier 2013–NM–032–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directives (ADs) 97–11–07 and AD 99–18–23, which apply to all The Boeing Company Model MD–90–30 airplanes. AD 97–11–07 and AD 99–18–23 currently require revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate certain compliance times for principal structural elements (PSE) inspections and replacement times for safe-life limited parts. Since we issued AD 97–11–07 and AD 99–18–23, an analysis of data identified a need to introduce a new PSE requirement for the rear spar caps of the horizontal stabilizer. This proposed AD would require revising the maintenance or inspection program to incorporate the new PSE requirement and its associated inspections. We are proposing this AD to detect and correct fatigue cracking of PSEs and certain safe-life limited parts, which could adversely affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by January 23, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.* 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;* 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 (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5233; fax: (562) 627–5210; email: *roger.durbin@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–2013–0981; Directorate Identifier 2013–NM–032–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://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On May 16, 1997, we issued AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997), for all The Boeing Company Model MD–90–30 airplanes. AD 97–11–07 requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness (MD–90–30 Airworthiness Limitations Instructions

(ALI)) to add principle structural elements (PSE) requirements. AD 97–11–07 resulted from analysis of data that identified reduced initial inspection thresholds, reduced repetitive inspection intervals for PSEs, and other PSEs to be added to the ALI. We issued AD 97–11–07 to detect and correct fatigue cracking, which could result in reduced structural integrity or reduced controllability of the airplane.

On August 27, 1999, we issued AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999), for all The Boeing Company Model MD–90–30 airplanes. AD 99–18–23 requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness (MD–90–30 Airworthiness Limitations Instructions (ALI)) to incorporate certain replacement times for safe-life limited parts. AD 99–18–23 resulted from analysis of data that identified reduced replacement times for certain safe-life limited parts. We issued AD 99–18–23 to prevent fatigue cracking of various safe-life limited parts, which could adversely affect the structural integrity of airplanes.

Actions Since Existing AD Was Issued

Since we issued AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997), and AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999), an analysis of data identified the need to introduce a new principle structural elements (PSE) requirement for the rear spar of the horizontal stabilizer and its associated inspections.

Relevant Service Information

We reviewed Boeing MD–90 Airworthiness Limitations Instructions (ALI) Report No. MDC–94K9000, Revision 6, dated September 2011. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0981.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (n) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

Proposed AD Requirements

This proposed AD would retain all of the requirements of AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997), and AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999). This proposed AD would require revising the maintenance program to incorporate the new PSE requirement and its associated inspections.

Costs of Compliance

We estimate that this proposed AD affects 52 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise airworthiness limitations [retained actions from AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997).	1 work-hour × $85 per hour = $85	$0	$85	$35,445
Revise airworthiness limitations [retained actions from AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999).	1 work-hour × 85 per hour = 85	0	85	35,445
Revise airworthiness limitations [new proposed action].	1 work-hour × 85 per hour = 85	0	85	35,445

Authority for this Rulemaking

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

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

Regulatory Findings

We have determined that this 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 that the 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:

■ a. Removing airworthiness directive (AD) 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997), and AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999), and

■ b. Adding the following new AD:

The Boeing Company: Docket No. FAA–2013–0981; Directorate Identifier 2013–NM–032–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by January 23, 2014.

(b) Affected ADs

This AD supersedes AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997), and AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999).

(c) Applicability

This AD applies to all The Boeing Company Model MD–90–30 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 51, Standard Practices/Structures; Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by an analysis of data that identified a need to introduce a new principal structural elements (PSE) requirement for the rear spar caps of the horizontal stabilizer. We are issuing this AD to detect and correct fatigue cracking of PSEs and certain safe-life limited parts, which could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of Airworthiness Limitations of Principal Structural Elements

This paragraph restates the requirements of paragraph (a) of AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997). Within 180 days after June 26, 1997 (the effective date of AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997)), revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness (Airworthiness Limitations Instructions (ALI), McDonnell Douglas Report No. MDC–94K9000, dated November 1994) to incorporate the Item, Location, and Inspection Interval of principal structural elements identified in paragraphs (g)(1) through (g)(3) of this AD. This may be accomplished by inserting a copy of Revision 1 of the ALI, dated January 1995; or a copy of this AD into the ALI.

(1) For Item 53.30.02.3 at Skin Panels, STA 237 to 1395 Fuselage Skin in Constant Section from Longeron 3 Left to Longeron 3 Right: Initial Interval at 60,000 landings. Repeat the inspection thereafter at intervals not to exceed 11,000 landings.

(2) For Item 53.30.02.4 at Skin Panels, STA 237 to 1395 Fuselage Hoop Skin Splice in Constant Section from Longeron 5 Left to Longeron 5 Right: Initial Interval at 60,000 landings. Repeat the inspection thereafter at intervals not to exceed 30,000 landings.

(3) For Item 54.10.04.1 at Thrust Bulkhead, Pylon—STA Yn 170.5—Rear Spar and Engine Thrust Support Fitting (Upper and Lower): Initial Interval at 15,000 landings. Repeat the inspection thereafter at intervals not to exceed 4,500 landings.

(h) Retained Revision of Airworthiness Limitations

(1) This paragraph restates the requirements of paragraph (b) of AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997). Within 180 days after June 26, 1997 (the effective date of AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997)), revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness (Airworthiness Limitations Instructions (ALI), McDonnell Douglas Report No. MDC–94K9000, dated November 1994) to incorporate the Item, Location, and Inspection Interval of principal structural element specified in paragraph (h)(2) of this AD. This may be accomplished by inserting a copy of Revision 2 to the ALI, dated July 1996, or a copy this AD into the ALI or Airworthiness Limitations Section.

(2) For Item 55.13.01.1 at Plates/Skin—Upper STA Xh 27.2 Left to Xh 27.2 Right—Upper Aft Skin Plank with Integral Stringers from Xh 7.234 to Xh 26.859: Initial Interval at 60,000 landings. Repeat the inspection thereafter at intervals not to exceed 8,100 landings.

(i) Retained Restriction on Alternative Inspections and Inspection Intervals

This paragraph restates the restriction on alternative inspections and inspection intervals required by paragraph (c) of AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997). Except as provided by paragraphs (l) and (n) of this AD:

After the actions required by paragraphs (g) and (h) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the parts specified in paragraphs (g) and (h) of this AD.

(j) Retained Revision of Airworthiness Limitations of Safe-Life Limited Parts:

This paragraph restates the requirements of paragraph (a) of AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999). Within 180 days after October 8, 1999 (the effective date of AD 99–18–23, Amendment 39–48284 (64 FR 48284, September 3, 1999)), revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness (Airworthiness Limitations Instructions (ALI), McDonnell Douglas Report No. MDC–94K9000, dated November 1994) to incorporate the Part Number, Item, and Mandatory Replacement Time of certain safe-life limited parts by inserting a copy of Revision 3, to the ALI, dated November 1997, into the ALI.

(k) Retained Restriction on Alternative Inspections and Inspection Intervals

This paragraph restates the restriction on alternative inspections and inspection intervals required by paragraph (b) of AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999). Except as provided by paragraphs (l) and (n) of this AD: After the actions required by paragraph (j) of this AD have been accomplished, no alternative replacement times for the safe-life limited parts specified in McDonnell Douglas ALI Report No. MDC–94K9000, Revision 3, dated November 1997.

(l) New Requirements of This AD: Revision of the Maintenance Program

(1) Within 180 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the tasks specified in Airworthiness Limitations Instructions (ALI), Boeing Report No. MDC–94K9000, Revision 6, dated September 2011. The compliance times for the initial and repetitive intervals for the tasks are stated in Airworthiness Limitations Instructions (ALI), Boeing Report No. MDC–94K9000, Revision 6, dated September 2011. Doing the revision required by this paragraph terminates the revisions required by paragraphs (g), (h), and (j) of this AD.

(m) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (l) 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 (AMOC) in accordance with the procedures specified in paragraph (n) of this AD.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles 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 (o) 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.

(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 Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles

ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997), and AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999), are approved as AMOCs for the corresponding provisions of this AD.

(o) Related Information

(1) For more information about this AD, contact Roger Durbin, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5233; fax: (562) 627–5210; email: *roger.durbin@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.* 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.

Issued in Renton, Washington, on November 29, 2013.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–29317 Filed 12–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0980; Directorate Identifier 2013–NM–129–AD]

RIN 2120–AA64

Airworthiness Directives; EADS CASA (Type Certificate Previously Held by Construcciones Aeronauticas, S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain EADS CASA (Type Certificate Previously Held by Construcciones Aeronauticas, S.A.) Model CN–235–300 airplanes. This proposed AD was prompted by reports of reduced thickness of the center fuselage lower skin panel. This proposed AD would require a detailed inspection to determine the presence of panel thickness reduction, and repetitive nondestructive testing (NDT) inspections and repair if necessary. We are proposing this AD to detect and correct a reduced thickness of lower panel joints, which could result in reduced fatigue and damage tolerant characteristics of the lower panel joint to the adjacent side panels and lead to failure of the center fuselage lower skin panel, resulting in loss of control of the airplane.

DATES: We must receive comments on this proposed AD by January 23, 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact EADS–CASA, Military Transport Aircraft Division (MTAD), Integrated Customer Services (ICS), Technical Services, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 05; email *MTA.TechnicalService@casa.eads.net;* Internet *http://www.eads.net.* 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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0980; Directorate Identifier 2013–NM–129–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0131, dated June 25, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During delivery of a spare centre fuselage lower skin panel to a CN–235 aeroplane operator, a reduced thickness of the spare panel was identified. The affected panel is used as the lower part of the fuselage between Frame (FR) FR13 and FR21, and from Stringer (STR) 24 left hand (LH) side to STR24 right hand (RH) side. Several CN–235 aeroplanes could have been delivered with a reduced thickness panel.
>
> This condition, if not detected and corrected, could result in reduced fatigue and damage tolerant characteristics of the lower panel joint to the adjacent side panels and lead to failure of the part.
>
> To address this potentially unsafe condition, EADS–CASA issued All Operator Letter (AOL) 235–024 to provide instructions to determine correct centre fuselage lower panel configuration by accomplishing a detailed visual inspection (DVI) of affected fuselage area [for any cracking].
>
> For the reason described above, this [EASA] AD requires a one-time inspection of the affected panel thickness at STR24 LH and STR24 RH. In case a nonconforming panel is found to be installed, this [EASA] AD requires repetitive Non Destructive Testing (NDT) inspections and, depending on findings, the accomplishment of applicable corrective action(s).

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0980.

Relevant Service Information

EADS CASA (Type Certificate Previously Held by Construcciones Aeronauticas, S.A.) has issued EADS CASA All Operator Letter 235–024, Revision 01, dated March 1, 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 This Proposed AD

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

In many FAA transport ADs, when the service information specifies to contact the manufacturer for further instructions if certain discrepancies are found, we typically include in the AD a requirement to accomplish the action using a method approved by either the FAA or the State of Design Authority (or its delegated agent).

We have recently been notified that certain laws in other countries do not allow such delegation of authority, but some countries do recognize design approval organizations. In addition, we have become aware that some U.S. operators have used repair instructions that were previously approved by a State of Design Authority or a manufacturer Design Approval Holder (DAH) as a method of compliance with this provision in FAA ADs. Frequently, in these cases, the previously approved repair instructions come from the airplane structural repair manual or Airbus the DAH repair approval statements (RAS) that were not specifically developed to address the unsafe condition corrected by the AD. Using repair instructions that were not specifically approved for a particular AD creates the potential for doing repairs that were not developed to address the unsafe condition identified by the MCAI AD, the FAA AD, or the applicable service information, which could result in the unsafe condition not being fully corrected.

To prevent the use of repairs that were not specifically developed to correct the unsafe condition, this proposed AD would require that the repair approval specifically refer to the FAA AD. This change is intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we use the phrase ''its delegated agent, or the DAH with State of Design Authority design organization approval, as applicable'' in this proposed AD to refer to an organization DAH authorized to approve required repairs for this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 20 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed visual inspection	1 work-hour × $85 per hour = $85	N/A	$85	$1,700.
NDT inspections	19 work-hours × $85 per hour = $1,615 per inspection cycle.	N/A	$1,615 per inspection cycle.	$32,300 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 proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

We 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:

EADS CASA (Type Certificate Previously Held by Construcciones Aeronauticas, S.A.): Docket No. FAA–2013–0980; Directorate Identifier 2013–NM–129–AD.

(a) Comments Due Date

We must receive comments by January 23, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to EADS CASA (Type Certificate previously held by Construcciones Aeronauticas, S.A.) Model CN–235–300 airplanes, certificated in any category, manufacturer serial numbers (MSN) C–143 through C–208, inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by reports of reduced thickness of the center fuselage lower skin panel. We are issuing this AD to detect and correct a reduced thickness of lower panel joints, which could result in reduced fatigue and damage tolerant characteristics of the lower panel joint to the adjacent side panels and lead to failure of the center fuselage lower skin panel, resulting in loss of control of the airplane.

(f) Compliance

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

(g) Detailed Visual Inspection

For airplanes having MSNs C–143 through C–195 inclusive, C–201, and C–202: At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, do a detailed inspection to determine the presence of panel thickness reduction of the lower panel joint with the side panels at stringer (STR)24 left-hand and STR24 right-hand, in accordance with EADS CASA All Operator Letter (AOL) 235–024, Revision 01, dated March 1, 2013.

(1) For airplane versions CG01, CL04, ED01, GC01, MM01, and SM01: At the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) Before the accumulation of 1,900 total flight cycles.

(ii) Within 10 flight cycles or 30 days after the effective date of this AD, whichever occurs first.

(2) For any airplane version not identified in paragraph (g)(1) of this AD: At the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Before the accumulation of 3,800 total flight cycles.

(ii) Within 10 flight cycles or 30 days after the effective date of this AD, whichever occurs first.

(h) Repetitive Non Destructive Test (NDT)

(1) For airplanes having MSNs C–196 through C–200 inclusive and C–203 through C–208 inclusive, and for airplanes with a reduced panel thickness identified during the inspection required by paragraph (g) of this AD: At the applicable time specified in paragraph (g)(1)(i) of this AD (for airplanes identified in paragraph (g)(1) of this AD), or paragraph (g)(2)(i) of this AD (for airplanes identified in paragraph (g)(2) of this AD), or within 50 flight cycles after the effective date of this AD, whichever occurs later, do a NDT inspection for cracking, in accordance with EADS CASA AOL 235–024, Revision 01, dated March 1, 2013. Repeat the inspection thereafter at the applicable time specified in paragraph (h)(1)(i) or (h)(1)(ii) of this AD.

(i) For airplane versions CG01, CL04, ED01, GC01, MM01, and SM01: At intervals not to exceed 1,000 flight cycles.

(ii) For airplane versions other than those identified in paragraph (h)(1)(i) of this AD: At intervals not to exceed 2,000 flight cycles.

(2) If any cracking is detected during the inspection required by paragraph (h)(1) of this AD, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent, or the Design Approval Holder with EASA design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD.

(i) Credit for Previous Actions

This paragraph provides credit for the inspections required by paragraphs (g) and (h) of this AD if those actions were performed before the effective date of this AD using EADS CASA AOL 235–024, dated February 12, 2013.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the Design Approval Holder with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information European Aviation Safety Agency Airworthiness Directive 2013–0131, dated June 25, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0980.

(2) For service information identified in this AD, contact EADS–CASA, Military Transport Aircraft Division (MTAD), Integrated Customer Services (ICS), Technical Services, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 05; email MTA.TechnicalService@casa.eads.net; Internet *http://www.eads.net.* 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.

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

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–29320 Filed 12–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0268; Directorate Identifier 2011–NM–129–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier supplemental notice of proposed rulemaking (SNPRM) for all The Boeing Company Model 737–600, -700, -700C, -800, -900 and -900ER series airplanes. The SNPRM proposed to require inspecting for a serial number that starts with the letters ''SAIC'' on the left- and right-side horizontal stabilizer identification plate; inspecting for correct bolt protrusion and chamfer of the termination fitting bolts of the horizontal stabilizer rear spar, if necessary; inspecting to determine if certain bolts are installed, if necessary; and doing related investigative and corrective actions if necessary. The SNPRM was prompted by reports of incorrectly installed bolts common to

the rear spar termination fitting on the horizontal stabilizer. This action revises the SNPRM by revising the applicable thresholds from flight cycles on the airplane to flight cycles accumulated on the affected horizontal stabilizer. We are proposing this SNPRM to prevent loss of structural integrity of the horizontal stabilizer attachment and loss of control of the airplane. Since these actions impose an additional burden over that proposed in the earlier SNPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this SNPRM by January 23, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6440; fax: 425–917–6590; email: *nancy.marsh@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–2012–0268; Directorate Identifier 2011–NM–129–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://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. The SNPRM published in the **Federal Register** on March 7, 2013 (78 FR 14734). The notice of proposed rulemaking (NPRM) published in the **Federal Register** on March 20, 2012 (77 FR 16188). The SNPRM added airplanes to the applicability of the NPRM, which proposed to require inspecting for a serial number that starts with the letters ''SAIC'' on the left- and right-side horizontal stabilizer identification plate; inspecting for correct bolt protrusion and chamfer of the termination fitting bolts of the horizontal stabilizer rear spar, if necessary; inspecting to determine if certain bolts are installed, if necessary; and doing related investigative and corrective actions if necessary.

Actions Since First SNPRM Was Issued

Since we issued the first SNPRM (78 FR 14734, March 7, 2013), we have determined that the applicable thresholds need to be revised from flight cycles on the airplane to flight cycles accumulated on the affected horizontal stabilizer.

Comments

We gave the public the opportunity to comment on the first SNPRM (78 FR 14734, March 7, 2013). The following presents the comments received on the first SNPRM and the FAA's response to each comment.

Request To Revise Applicability

Boeing requested that the applicability of the first SNPRM (78 FR 14734, March 7, 2013) be revised to apply only to the airplanes specified in Boeing Service Bulletin 737–55–1090, dated March 30, 2011, and that the FAA establish operator responsibility in lieu of revising the applicability to include all line numbers. Boeing stated that it is the operators' responsibility to maintain records, including flight cycles on principal structural elements, and that the horizontal stabilizer is not designed as a rotable part and no interchangeability notes are included on drawings.

We disagree. In the comments to the NPRM (77 FR 16188, dated March 20, 2012), one operator commented that stabilizers are rotated among airplanes. Therefore, the applicability of the NPRM was incorrect. The first SNPRM (78 FR 14734, March 7, 2013) was issued to open the applicability to ''all'' affected airplane models to address the possibility that stabilizers have been (or can be) rotated among the fleet. Even if an operator knows the stabilizer has been rotated to another airplane, if that airplane is not included in the applicability of this proposed second SNPRM, there would be no requirement to inspect that stabilizer; hence, this SNPRM should apply to all The Boeing Company Model 737–600, –700, –700C, –800, –900 and –900ER series airplanes. Although the Boeing comment stated that the stabilizers are not designed to be a rotable part, we note that Boeing Document D042A525, ''Compliance Document and Repair Evaluation Guidelines, Damage Tolerance Data for Repairs and Alterations − 14CFR 26 Subpart F,'' applicable to the 737–600/700/700C/800/900/900ER fleet, does include the horizontal stabilizer in the listing of Replaceable Structural Components requiring consideration for compliance with section 121.1109(c)(2) or section 129.109(b)(2) of the Federal Aviation Regulations (14 CFR 121 or 14 CFR 129), as applicable. We have not changed this second SNPRM in this regard.

Request To Revise Compliance Time

Boeing requested that the FAA establish operator responsibility by adding the following note to the AD:

Initial inspection (threshold) and intervals are measured in flight cycles or flight hours that a particular principle structural element (PSE) detail has accumulated regardless of what the airframe as a whole has accumulated. Most PSE details have never been replaced and therefore have accumulated the same flight cycles and flight hours as the airframe. Some PSE details are replaced, such as when installing Removable Structural Components (repairable/rotable/expendables) or installing used structural parts as a repair. In these cases the PSE details have accumulated flight cycles and flight hours that may be different than the airframe. The operator must account for this in determining when inspections must be done. In determining the PSE flight cycles or flight hours, operators may use the process defined in Advisory Circular 120–93.

Boeing also proposed to add the note to Boeing Service Bulletin 737–55–1090, dated March 30, 2011. Boeing stated that the note is in use in the 737 Maintenance Planning Data (MPD) Section 9, Airworthiness Limitations D926A001–CMR, as well as the MPD Airworthiness Limitations sections of other Boeing models, to address FAA concerns about operators interchanging parts during maintenance that Boeing had never intended to be rotable.

We partially agree. We agree with clarifying the compliance time for the requirements of paragraphs (g) and (h) of this second SNPRM by specifying total flight cycles accumulated on the horizontal stabilizer. Inspection thresholds measured in ''total flight cycles'' must be the number of total flight cycles accumulated on the principal structural element, which may differ from airframe cycles if the horizontal stabilizer has been rotated to a different airplane. We have added paragraph (i) to this second SNPRM to clarify that the compliance times for paragraphs (g) and (h) of this second SNPRM are total flight cycles accumulated on the horizontal stabilizer since new, and we have moved the information contained in paragraph (i) of the first SNPRM to paragraph (j)(1) of this second SNPRM. We disagree that it is necessary to add this note to this second SNPRM.

Request To Clarify Applicability

All Nippon Airways (ANA) requested that paragraphs (g) and (h) of the first SNPRM (78 FR 14734, March 7, 2013) be clarified to specify which airplanes are subject to the requirements, since the applicability of the SNPRM includes airplanes after line number (L/N) 1556, which are not addressed by Boeing Service Bulletin 737–55–1090, dated March 30, 2011.

We agree. We have revised paragraphs (g) and (h) of this second SNPRM to specify that Group 1 airplanes are Model 737–600, –700, –800, –900 and –900ER airplanes, regardless of line number, and that Group 2 airplanes are Model 737–700C airplanes, regardless of line number. We have also added paragraphs (j)(4) and (j)(5) to this second SNPRM to clarify that, where the service information specifies Group 1 airplanes as Model 737–600, –700, –800, and –900 airplanes having line numbers 379 through 1556 inclusive, this AD specifies Group 1 airplanes as all Model 737–600, –700, –800, –900, and –900ER airplanes, regardless of line number, and where the service information specifies Group 2 airplanes as Model 737–700C airplanes having line numbers 496 through 1548 inclusive, this AD specifies Group 2 airplanes as all Model 737–700C airplanes, regardless of line number.

Request To Allow Records Check To Identify Suspect Horizontal Stabilizers

All Nippon Airways (ANA) requested that we revise paragraph (g) of the first SNPRM (78 FR 14734, March 7, 2013) to allow a records check of the maintenance records and delivery documentation to confirm that the horizontal stabilizer has not been rotated from the airplane. ANA stated that, with this revision, the requirements of paragraph (g) would not apply to airplanes after L/N 1556, even if the horizontal stabilizer has a serial number beginning with ''SAIC,'' because the discrepant stabilizers were delivered on airplanes prior to L/N 1557.

We agree. By comparing the horizontal stabilizer serial number with the serial number shown on the delivery documentation for that airplane, an operator can confirm that the horizontal stabilizer is not subject to the unsafe condition. We have revised paragraphs (g) and (h) in this second SNPRM by adding a provision specifying that a review of manufacturer delivery and operator maintenance records is acceptable to make the determination, if the horizontal stabilizer serial number can be conclusively identified from that review. We also added paragraph (g)(2) in this second SNPRM to state that if a serial number starting with the letters ''SAIC'' is found on a horizontal stabilizer identification plate on airplanes after L/N 1556, and the serial number of the horizontal stabilizer on the airplane is the same as the serial number in the delivery documentation, no further action is required by this SNPRM for that horizontal stabilizer.

Request To Provide Serial Numbers of Discrepant Horizontal Stabilizers

TUIfly Fluggesellschaft mbH requested that we revise paragraph (g) of the first SNPRM (78 FR 14734, March 7, 2013) to provide complete serial numbers for the discrepant horizontal stabilizers identified in the AD, instead of using only the first letters, ''SAIC,'' since those horizontal stabilizers having a serial number beginning with ''SAIC,'' which were not originally installed in airplanes after L/N 1556, are not considered to be suspect and should not require the inspection.

We disagree with the request. Although identifying the serial numbers of all suspect parts would be useful to eliminate the need to inspect all horizontal stabilizers, we do not have this information. If the serial numbers are provided to us or to the operators, under the provisions of paragraph (l) of this second SNPRM, we may approve requests to exclude non-suspect horizontal stabilizers from the requirements of paragraphs (g) and (h) of this second SNPRM. We have not changed this second SNPRM in this regard.

Request To Clarify Parts Installation Limitation

ANA requested that the parts installation limitation specified in paragraph (k) of the first SNPRM (78 FR 14734, March 7, 2013) be clarified to exclude horizontal stabilizers that have a serial number beginning with ''SAIC'' and that were delivered on airplanes after L/N 1556.

We disagree with revising the wording in paragraph (k) of this second SNPRM, because each horizontal stabilizer rotated after the effective date of this second SNPRM must be confirmed to be suspect or non-suspect as the stabilizer may have been previously rotated from another airplane having a line number before L/N 1557. If the stabilizer is found to be suspect, then the inspections required in paragraphs (g) and (h) of this second SNPRM must be accomplished. We have not changed this second SNPRM in this regard.

FAA's Determination

We are proposing this second SNPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. Certain changes described above expand the scope of the SNPRM (78 FR 14734, March 7, 2013). As a result, we have determined that it is necessary to reopen

the comment period to provide additional opportunity for the public to comment on this second SNPRM.

Proposed Requirements of This Second SNPRM

This second SNPRM would require inspecting for a serial number that starts with the letters ''SAIC'' on the left- and right-side horizontal stabilizer identification plate; inspecting for correct bolt protrusion and chamfer of the termination fitting bolts of the horizontal stabilizer rear spar, if necessary; inspecting to determine if certain bolts are installed, if necessary; and doing related investigative and corrective actions if necessary.

Clarification of Compliance Time

While it can be inferred that the compliance times stated in Boeing Service Bulletin 737–55–1090, dated March 30, 2011, are total flight cycles on the airplane since new, this second SNPRM specifies compliance times as total flight cycles accumulated on the horizontal stabilizer since new. Also, for repetitive inspection intervals, where the service information specifies ''flight cycles,'' this second SNPRM clarifies ''flight cycles accumulated on the horizontal stabilizer.''

Explanation of Change Made to This Second SNPRM

We clarified the wording in paragraph (g)(2) of this second SNPRM to specify that if the serial number found on a horizontal stabilizer identification plate matches the serial number of the horizontal stabilizer stated in the delivery documentation of the airplane, no further action is required by paragraph (g) of this second SNPRM.

Costs of Compliance

We estimate that this proposed AD affects 1,147 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85 per inspection cycle	$0	$85	$97,495
Replacement of bolts	17 work-hours × $85 per hour = $1,445	1,530	2,975	3,412,325

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions (contacting Boeing and repairing cracks or damage) specified in this proposed AD.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2012–0268; Directorate Identifier 2011–NM–129–AD.

(a) Comments Due Date

We must receive comments by January 23, 2014.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST00830SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/408E012E008616A7862578880060456C?OpenDocument&Highlight=st00830se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST00830SE 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

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by reports of incorrectly installed bolts common to the rear spar termination fitting of the horizontal stabilizer. We are issuing this AD to prevent loss of structural integrity of the horizontal stabilizer attachment and loss of control of the airplane.

(f) Compliance

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

(g) Inspecting the Horizontal Stabilizer and Corrective Actions

For Group 1 and Group 2 airplanes identified in Boeing Service Bulletin 737–55–1090, dated March 30, 2011, except as provided by paragraph (j) of this AD: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–55–1090, dated March 30, 2011, except as provided by paragraph (i) of this AD, do an inspection for a serial number that starts with the letters ''SAIC'' on the identification plates of the left- and right-side horizontal stabilizers, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–55–1090, dated March 30, 2011. A review of manufacturer delivery and operator maintenance records is acceptable to make the determination specified in this paragraph if the serial number can be conclusively identified from that review.

(1) If no ''SAIC'' serial number is found, no further action is required by paragraph (g) of this AD.

(2) If a serial number starting with the letters ''SAIC'' is found on a horizontal stabilizer identification plate on an airplane after line number (L/N) 1556, and the serial number of the horizontal stabilizer is the same as stated in the delivery documentation of the airplane, no further action is required by paragraph (g) of this AD for that horizontal stabilizer.

(3) If a serial number starting with the letters ''SAIC'' is found on a horizontal stabilizer identification plate, except as specified in paragraph (g)(2) of this AD: Except as provided by paragraphs (i) and (j) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–55–1090, dated March 30, 2011, do a detailed inspection for correct bolt protrusion and correct chamfer of the termination fitting bolts of the horizontal stabilizer rear spar, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–55–1090, dated March 30, 2011. Concurrently with the detailed inspection, inspect to determine if any bolt other than part number (P/N) BACB30US14K() or BACB30US16K(), as applicable, is installed. Before further flight, do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–55–1090, dated March 30, 2011.

(h) High Frequency Eddy Current (HFEC) and Ultrasonic Inspections of Termination Fitting and Repair

For airplanes identified in paragraph (g)(3) of this AD at any location where a new bolt having a P/N BACB30US14K() is installed as corrective action for damage found during any inspection required by paragraph (g) of this AD: Except as provided by paragraphs (i) and (j)(1) of this AD, at the times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–55–1090, dated March 30, 2011, do HFEC and ultrasonic inspections for cracking of the forward and aft sides of the termination fitting, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–55–1090, dated March 30, 2011. If any crack is found in any termination fitting: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD. Repeat the HFEC and ultrasonic inspections thereafter at intervals not to exceed 3,500 flight cycles on the horizontal stabilizer.

(i) Clarification of Compliance Time

Where the compliance times stated in Boeing Service Bulletin 737–55–1090, dated March 30, 2011, are ''total flight cycles,'' the compliance time in this AD is total flight cycles accumulated on the horizontal stabilizer since new.

(j) Exceptions to Service Information Specifications

(1) Where Boeing Service Bulletin 737–55–1090, dated March 30, 2011, specifies a compliance time ''after the original issue date on the service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Figure 1 of Boeing Service Bulletin 737–55–1090, dated March 30, 2011, points to the location of a part number rather than the serial number, this AD requires an inspection for an identification plate with a serial number that starts with the letters ''SAIC.''

(3) If, during any inspection required by paragraphs (g) and (h) of this AD, any bolt other than P/N BACB30US14K() or BACB30US16K(), as applicable, is found: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(4) Where Boeing Service Bulletin 737–55–1090, dated March 30, 2011, identifies Group 1 airplanes as 737–600, –700, –800, and –900 airplanes having line numbers 379 through 1556 inclusive, this AD specifies Group 1 airplanes as all 737–600, –700, –800, –900, and –900ER airplanes, regardless of line number.

(5) Where Boeing Service Bulletin 737–55–1090, dated March 30, 2011, identifies Group 2 airplanes as 737–700C airplanes having line number 496 through 1548 inclusive, this AD specifies Group 2 airplanes as all 737–700C airplanes, regardless of line number.

(k) Parts Installation Limitation

As of the effective date of this AD, no person may install a horizontal stabilizer on any airplane included in the applicability of this AD, unless the horizontal stabilizer has been inspected and any applicable corrective actions done in accordance with paragraphs (g) and (h) of this AD.

(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) 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 Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6440; fax: 425–917–6590; email: *nancy.marsh@faa.gov.*

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

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

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–29310 Filed 12–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0917; Airspace Docket No. 13–ACE–16]

Proposed Amendment of Class D Airspace; St. Joseph, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace at St. Joseph, MO. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Rosecrans Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Comments must be received on or before January 23, 2014.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2013–0917/Airspace Docket No. 13–ACE–16, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office telephone 1–800–647–5527, is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0917/Airspace Docket No. 13–ACE–16.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class D airspace to accommodate new standard instrument approach procedures at Rosecrans Municipal Airport, St. Joseph, MO. Accordingly, additional segments would extend from the 4.3-mile radius of the airport to 4.9 miles northwest and 4.5 miles southeast of the airport, to retain the safety and management of IFR aircraft in Class E airspace to/from the en route environment.

Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9X, dated August 7, 2013 and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Rosecrans Municipal Airport, St. Joseph, MO.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE MO D St. Joseph, MO [Amended]

St. Joseph, Rosecrans Memorial Airport, MO (Lat. 39°46′19″ N., long. 94°54′35″ W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4.3-mile radius of Rosecrans Memorial Airport, and within 1.2 miles each side of the 136° bearing from the airport extending from the 4.3-mile radius to 4.5 miles southeast of the airport, and within 1.2 miles each side of the 316° bearing from the airport extending from the 4.3-mile radius to 4.9 miles northwest of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Fort Worth, TX, on November 25, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–29241 Filed 12–6–13; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0593; Airspace Docket No. 13–AGL–22]

Proposed Amendment of Class E Airspace; Hamilton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Hamilton, OH. Decommissioning of the Hamilton nondirectional radio beacon (NDB) at Butler County Regional Airport has made reconfiguration necessary for standard instrument approach procedures and for the safety and management of Instrument Flight Rules (IFR) operations at the airport. The airport's name and geographic coordinates also would be changed.

DATES: 0901 UTC. Comments must be received on or before January 23, 2014.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2013–0593/Airspace Docket No. 13–AGL–22, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0593/Airspace Docket No. 13–AGL–22.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Butler County Regional Airport, formerly Hamilton-Fairfield Airport, Hamilton, OH. Airspace reconfiguration to within a 6.6-mile radius of the airport is necessary due to the decommissioning of the Hamilton NDB and the cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of IFR operations at the airport. Geographic coordinates and the airport name would also be updated to coincide with the FAA's aeronautical database.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9X, dated August 7, 2013 and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Butler County Regional Airport, Hamilton, OH.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

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

* * * * *

AGL OH E5 Hamilton, OH [Amended]

Butler County Regional Airport, OH
(Lat. 39°21′50″ N., long. 84°31′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Butler County Regional Airport.

Issued in Fort Worth, TX, on November 25, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–29327 Filed 12–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0916; Airspace Docket No. 13–AGL–30]

Proposed Amendment of Class E Airspace; Philip, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Philip, SD. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Philip Airport. Geographic coordinates of the airport also would be adjusted. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Comments must be received on or before January 23, 2014.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2013–0916/Airspace Docket No. 13–AGL–30, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office, telephone 1–800–647–5527, is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0916/Airspace Docket No. 13–AGL–30.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Philip Airport, Philip, SD. Accordingly, additional segments would

extend from the 6.4-mile radius of the airport to 11.8 miles northwest and 11.5 miles southeast of the airport, to retain the safety and management of IFR aircraft in Class E airspace to/from the en route environment. Geographic coordinates would also be updated to coincide with the FAA's aeronautical database.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9X, dated August 7, 2013 and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Philip Airport, Philip, SD.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

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

* * * * *

AGL SD E5 Philip, SD [Amended]

Philip Airport, SD
(Lat. 44°02′55″ N., long. 101°35′56″ W.)

Philip VOR/DME
(Lat. 44°03′30″ N., long. 101°39′51″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Philip Airport, and within 2 miles each side of the 308° bearing from the airport extending from the 6.4-mile radius to 11.8 miles northwest of the airport, and within 2 miles each side of the 128° bearing from the airport extending from the 6.4-mile radius to 11.5 miles southeast of the airport, and that airspace bounded by a line 7 miles south of and parallel to the Philip VOR/DME 102° radial extending from the VOR/DME to 2.7 miles east of the VOR/DME, and within 4 miles north and 8.3 miles south of the Philip VOR/DME 282° radial extending from the VOR/DME to 16.1 miles west of the VOR/DME.

Issued in Fort Worth, TX, on November 27, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–29324 Filed 12–6–13; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0842; Airspace Docket No. 13–AGL–27]

Proposed Establishment of Class E Airspace; Mansfield, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Mansfield, OH. A Class E surface area is necessary to accommodate military mission changes when the control tower is closed at Mansfield Lahm Regional Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Comments must be received on or before January 23, 2014.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2013–0842/Airspace Docket No. 13–AGL–27, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527, is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0842/Airspace Docket No. 13–AGL–27.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace designated as a surface area within a 4.4-mile radius of Mansfield Lahm Regional Airport, Mansfield, OH, with a small segment extending from the 4.4-mile radius of the airport to 4.8 miles northwest of the airport, to accommodate military mission changes at the airport. Controlled airspace is needed for the safety and management of IFR operations that the Air National Guard units will need to conduct airdrop and other low level training during hours when the control tower is closed.

Class E airspace areas are published in Paragraph 6002 of FAA Order 7400.9X, dated August 7, 2013 and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Mansfield Lahm Regional Airport, Mansfield, OH.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

Paragraph 6002: Class E Airspace Designated as Surface Areas

* * * * *

AGL OH E2 Mansfield, OH [New]

Mansfield Lahm Regional Airport, OH
(Lat. 40°49′17″ N., long. 82°31′00″ W.)
Mansfield VORTAC
(Lat. 40°52′07″ N., long. 82°35′27″ W.)

Within a 4.4-mile radius of Mansfield Lahm Regional Airport, and within 1.7 miles each side of the Mansfield VORTAC 307° radial extending from the 4.4-mile radius to 4.8 miles northwest of the airport.

Issued in Fort Worth, TX, on November 25, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–29243 Filed 12–6–13; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–126285–12]

RIN 1545–BL06

Partnerships; Start-Up Expenditures; Organization and Syndication Fees

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations concerning the deductibility of start-up expenditures and organizational expenses for partnerships. The proposed regulations provide guidance regarding the deductibility of start-up expenditures and organizational expenses for partnerships following a technical termination of a partnership.

DATES: Written or electronic comments must be received by March 10, 2014.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–126285–12), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–126285–12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking portal at *www.regulations.gov* (IRS REG–126285–12)

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David H. Kirk or Rachel Smith at (202) 317–6852; concerning submissions of comments or to request a hearing, Oluwafunmilayo Taylor, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 708(b) of the Internal Revenue Code (Code).

1. Section 708: Continuation of Partnership

Section 708(a) generally provides that, for purposes of subchapter K of chapter 1 of subtitle A of Title 26, an existing partnership shall be considered as continuing if it is not terminated.

Section 708(b)(1) provides that, for purposes of section 708(a), a partnership shall be considered as terminated only if (A) no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership, or (B) within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.

Section 1.708–1(b)(4) of the Income Tax Regulations provides that if a partnership is terminated by a sale or exchange of an interest, the following is deemed to occur: the partnership contributes all of its assets and liabilities to a new partnership in exchange for an interest in the new partnership; immediately thereafter, the terminated partnership distributes interests in the new partnership to the purchasing partner and the other remaining partners in proportion to their respective interests in the terminated partnership in liquidation of the terminated partnership, either for the continuation of the business by the new partnership or for its dissolution and winding up.

2. Section 195 Start-Up Expenditures

Section 195(a) provides that, except as otherwise provided in section 195, no deduction shall be allowed for start-up expenditures (as defined in section 195(c)(1)). Section 195(b)(1) provides that a taxpayer may elect to deduct start-up expenditures as provided in section 195(b)(1)(A) and (B).

Section 195(b)(1)(A) allows an electing taxpayer to deduct start-up expenditures in the taxable year in which the active trade or business begins. The amount that may be deducted under section 195(b)(1)(A) in that year is the lesser of (i) the amount of start-up expenditures with respect to the active trade or business, or (ii) $5,000, reduced (but not below zero) by the amount by which the start-up expenditures exceed $50,000.

Section 195(b)(1)(B) provides that any start-up expenditures that are not deductible under section 195(b)(1)(A) shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins. All start-up expenditures that relate to the active trade or business are considered in determining whether the start-up expenditures exceed $50,000, including expenditures incurred on or before October 22, 2004. Section 902(a) of the American Jobs Creation Act of 2004, Pub. L. 108–357, 118 Stat. 1418 (''AJCA''), amended section 195(b)(1) for start-up expenditures paid or incurred after October 22, 2004. Prior to the AJCA amendment, section 195(b)(1) (former section 195(b)(1)) allowed taxpayers to elect to treat such expenditures as deferred expenses deductible ratably over a period of at least 60 months.

Section 1.195–1(b) provides that, for start-up expenditures paid or incurred after August 16, 2011(the effective date of § 1.195–1(b)), a taxpayer is deemed to make an election under section 195(b) to amortize start-up expenditures for the taxable year in which the active trade or business to which the expenditures relate begins. However, taxpayers may apply all provisions of § 1.195–1 to start-up expenditures paid or incurred after October 22, 2004, provided that the period of limitations on assessment of tax for the year the election under § 1.195–1(b) is deemed made has not expired.

Section 195(b)(2) provides that in any case in which a trade or business is completely disposed of by the taxpayer before the end of the amortization period, any deferred expenses attributable to such trade or business that were not allowed as a deduction by reason of section 195 may be deducted to the extent allowable under section 165.

3. Section 709: Treatment of Organization and Syndication Fees

Section 709(a) provides that, except as otherwise provided in section 709(b), no deduction shall be allowed for any amounts paid or incurred to organize a partnership or to promote the sale of (or to sell) an interest in the partnership. Section 709(b) provides that a partnership may elect to deduct organizational expenses, within the meaning of section 709(b)(3), as provided in section 709(b)(1)(A) and (B).

Section 709(b)(1)(A) allows an electing partnership to deduct organizational expenses in the year in which the partnership begins business. The amount that may be deducted under section 709(b)(1)(A) in that year is the lesser of (i) the amount of the organizational expenses of the partnership, or (ii) $5,000, reduced (but not below zero) by the amount by which the organizational expenses exceed $50,000.

Section 709(b)(1)(B) provides that any organizational expenses that are not deductible under section 709(b)(1)(A) shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business. All organizational expenses incurred by the partnership are considered in determining whether the organizational expenses exceed $50,000, including expenses incurred on or before October 22, 2004. Prior to October 22, 2004, section 709(b) contained a rule similar to former section 195(b)(1).

Section 1.709–1(b)(2) provides that, for organizational expenses as defined in section 709(b)(3) and § 1.709–2(a) paid or incurred after August 16, 2011 (the effective date of § 1.709–1(b)(2)), a partnership is deemed to make an election under section 709(b) to amortize organizational expenses for the taxable year in which the partnership begins business. However, taxpayers may apply all provisions of § 1.709–1 to organizational expenses paid or incurred after October 22, 2004, provided that the period of limitations on assessment of tax for the year the election under § 1.709–1(b)(2) is deemed made has not expired.

Section 709(b)(2) provides that in any case in which a partnership is liquidated before the end of the amortization period, any deferred expenses attributable to the partnership that were not allowed as a deduction by reason of section 709 may be deducted to the extent allowable under section 165. See also § 1.709–1(b)(3). However,

there is no partnership deduction with respect to its capitalized syndication expenses. Id.

Explanation of Provisions

The Treasury Department and the IRS are aware that some taxpayers are taking the position that a technical termination under section 708(b)(1)(B) entitles a partnership to deduct unamortized start-up expenses and organizational expenses to the extent provided under section 165. The Treasury Department and the IRS believe this result is contrary to the congressional intent underlying sections 195, 708, and 709. Therefore, the proposed regulations amend § 1.708–1 to provide that a new partnership formed due to a transaction, or series of transactions, described in section 708(b)(1)(B) must continue amortizing the section 195 and section 709 expenses using the same amortization period adopted by the terminating partnership.

The legislative purpose of sections 195 and 709 was to allow expenses incurred in the formation of a partnership to be deducted ratably over the period during which the partnership benefits from those initial expenses. Section 195 and 709 provide that this period begins with the commencement of business (which must be an active trade or business in the case of section 195) and closes after 180 months, or when the business ceases, if earlier. The Treasury Department and the IRS believe that a technical termination under section 708(b)(1)(B) should not constitute a cessation of a trade or business to which the section 195 or section 709 expenses relate, nor does it otherwise constitute the type of disposition or liquidation that should trigger deduction of deferred section 195 or section 709 expenses.

Moreover, the Conference Report issued in conjunction with the enactment of AJCA treated start-up expenditures under section 195 and organizational expenditures under section 709 as analogous to other intangible business assets described in section 197, and accordingly determined that the period for the amortization of start-up expenditures and organizational expenditures should be consistent with the fifteen year amortization period for section 197 intangibles. H. Rep. No. 108–755, at 776–77 (October 07, 2004). Section 1.197–2(g)(2)(ii)(B) provides, generally, that in the case of a section 721 transaction in which an amortizable section 197 intangible is transferred to a partnership, the transferee partnership will continue to amortize its adjusted basis, to the extent it does not exceed the transferor's adjusted basis, ratably over the remainder of the transferor's 15-year amortization period. Section 1.197–2(g)(2)(iv)(B) provides that in applying § 1.197–2(g)(2)(ii)(B) to a partnership that is terminated pursuant to section 708(b)(1)(B), the terminated partnership is treated as the transferor and the new partnership is treated as the transferee with respect to any section 197 intangible held by the terminated partnership immediately preceding the termination. Consistent with Congress' intent of aligning the amortization of start-up and organizational expenditures with the treatment of section 197 intangibles, the new partnership resulting from a technical termination under section 708(b)(1)(B) should similarly continue to amortize the section 195 and section 709 expenses using the same amortization period adopted by the terminated partnership.

Practitioners suggested guidance on this issue to alleviate uncertainty regarding the proper treatment of these items when a partnership undergoes a technical termination. One alternative to the rule set forth above would allow the terminating partnership to immediately deduct any unamortized section 195 or section 709 items to the extent provided under section 165 on the effective date of the termination (as defined in § 1.708–1(b)(3)(ii)). However, the Treasury Department and the IRS decline to adopt this alternative, which as noted above would be inconsistent with Congress' intent to treat section 195 and section 709 items consistently with section 197 intangibles, and which might provide incentives for taxpayers to structure transactions in order to inappropriately accelerate the deduction of section 195 or section 709 expenses shortly after those expenses are incurred.

Proposed Effective/Applicability Date

These regulations, when published in their final form in the **Federal Register**, will apply to technical terminations that occur on or after December 9, 2013.

Special Analyses

It has been determined that these proposed regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is David H. Kirk, IRS Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.195–2 is added to read as follows:

§ 1.195–2 Technical termination of a partnership.

(a) *In general.* If a partnership that has elected to amortize start-up expenditures under section 195(b) and § 1.195–1 terminates in a transaction (or a series of transactions) described in section 708(b)(1)(B) or § 1.708–1(b)(2), the termination shall not be treated as resulting in a disposition of the partnership's trade or business for purposes of section 195(b)(2). See § 1.708–1(b)(6) for rules concerning the treatment of these start-up expenditures by the new partnership.

(b) *Effective/applicability date.* This section applies to a technical termination of a partnership under section 708(b)(1)(B) that occurs on or after December 9, 2013.

■ **Par. 3.** Section 1.708–1 is amended by adding paragraph (b)(6) to read as follows:

§ 1.708–1 Continuation of partnership.

* * * * *

(b) * * *

(6) *Treatment of certain start-up or organizational expenses following a technical termination*—(i) *In general.* If a partnership that has elected to amortize start-up expenditures under section 195(b) or organizational expenses under section 709(b)(1) terminates in a transaction (or a series of transactions) described in section 708(b)(1)(B) or paragraph (b)(2) of this section, the new partnership must continue to amortize those expenditures using the same amortization period adopted by the terminating partnership. See section 195 and § 1.195–1 for rules concerning the amortization of start-up expenditures and section 709 and § 1.709–1 for rules concerning the amortization of organizational expenses.

(ii) *Effective/applicability date.* This paragraph (b)(6) applies to a technical termination of a partnership under section 708(b)(1)(B) that occurs on or after December 9, 2013.

* * * * *

■ **Par. 4.** Section 1.709–1 is amended by:

■ 1. Designating the text in paragraph (b)(3) as paragraph (b)(3)(i), adding a heading to newly designated paragraph (b)(3)(i) and adding paragraph (b)(3)(ii);

■ 2. Adding a sentence at the end of paragraph (b)(5).

The additions read as follows:

§ 1.709–1 Treatment of organization and syndication costs.

* * * * *

(b) * * *

(3) *Liquidation of partnership*—(i) *In general.* * * *

(ii) *Technical termination of a partnership.* If a partnership that has elected to amortize organizational costs under section 709(b) terminates in a transaction (or a series of transactions) described in section 708(b)(1)(B) or § 1.708–1(b)(2), the termination shall not be treated as resulting in a liquidation of the partnership for purposes of section 709(b)(2). See § 1.708–1(b)(6) for rules concerning the treatment of these organizational costs by the new partnership.

* * *

(5) * * * Paragraph (b)(3)(ii) of this section applies to a technical termination of a partnership under section 708(b)(1)(B) that occurs on or after December 9, 2013.

Heather C. Maloy,

Deputy Commissioner for Operations Support.

[FR Doc. 2013–29177 Filed 12–6–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2013–0020]

RIN 1218–AC82

Process Safety Management and Prevention of Major Chemical Accidents

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Request for information.

SUMMARY: In response to Executive Order 13650, OSHA requests comment on potential revisions to its Process Safety Management (PSM) standard and its Explosives and Blasting Agents standard, potential updates to its Flammable Liquids standard and Spray Finishing standard, and potential changes to PSM enforcement policies. In this Request for Information (RFI), the Agency asks for information and data on specific rulemaking and policy options, and the workplace hazards they address. OSHA will use the information received in response to this RFI to determine what action, if any, it may take.

DATES: Submit comments and additional material on this Request for Information March 10, 2014. All submissions must bear a postmark or provide other evidence of the submission date. The following section describes the available methods for making submissions.

ADDRESSES: Submit comments and additional materials by any of the following methods:

Electronically: Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Facsimile: OSHA allows facsimile transmission of comments and additional material that are 10 pages or fewer in length (including attachments). Send these documents to the OSHA Docket Office at (202) 693–1648. OSHA does not require hard copies of these documents. Instead of transmitting facsimile copies of attachments that supplement these documents (for example, studies, journal articles), commenters must submit these attachments to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210. These attachments must identify clearly the sender's name, the date, subject, and docket number (OSHA–2013–0020) so that the Docket Office can attach them to the appropriate document.

Regular mail, express mail, hand delivery, or messenger (courier) service: Submit comments and any additional material (for example, studies, journal articles) to the OSHA Docket Office, Docket No. OSHA–2013–0020 or RIN 1218–AC82, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone: (202) 693–2350. (OSHA's TTY number is (877) 889–5627.) Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency's name and the docket number for this Request for Information (that is, OSHA–2013–0020). OSHA will place comments and other material, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting statements they do not want made available to the public and submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

If you submit scientific or technical studies or other results of scientific research, OSHA requests (but is not requiring) that you also provide the following information where it is available: (1) Identification of the funding source(s) and sponsoring organization(s) of the research; (2) the extent to which the research findings were reviewed by a potentially affected party prior to publication or submission to the docket, and identification of any such parties; and (3) the nature of any financial relationships (e.g., consulting agreements, expert witness support, or research funding) between investigators who conducted the research and any organization(s) or entities having an interest in the rulemaking and policy

options discussed in this RFI. Disclosure of such information is intended to promote transparency and scientific integrity of data and technical information submitted to the record. This request is consistent with Executive Order 13563, issued on January 18, 2011, which instructs agencies to ensure the objectivity of any scientific and technological information used to support their regulatory actions. OSHA emphasizes that all material submitted to the record will be considered by the Agency if it engages in rulemaking.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. The *http://www.regulations.gov* index lists all documents in the docket. However, some information (e.g., copyrighted material) is not available publicly to read or download through the Web site. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Ms. Lisa Long, Director, Office of Engineering Safety, OSHA Directorate of Standards and Guidance, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2222; email: *long.lisa@dol.gov.*

SUPPLEMENTARY INFORMATION:

Copies of this ***Federal Register*** *notice and news releases:* Electronic copies of these documents are available at OSHA's Web page at *http://www.osha.gov.* Copies of this **Federal Register** notice also are available at *http://www.regulations.gov.*

I. Background

A. Executive Order 13650

On August 1, 2013, President Obama signed Executive Order 13650, entitled *Improving Chemical Facility Safety and Security.* Section 6(e)(ii) of the order requires OSHA to publish, within 90 days, an RFI designed to identify issues related to modernization of its PSM standard [1] and related standards necessary to meet the goal of preventing major chemical accidents. In response to the Executive Order, OSHA is publishing this RFI to collect data and information on its PSM standard and related standards, as well as other regulatory issues involving hazardous chemicals.

B. Process Safety Management of Highly Hazardous Chemicals

OSHA originally promulgated the § 1910.119 Process Safety Management (PSM) standard in 1992 in response to a number of catastrophic chemical-release incidents that occurred worldwide. The incidents spurred broad recognition in the safety community that accidental releases of highly hazardous chemicals can result in multiple worker injuries or fatalities. The main objective of the PSM standard is to prevent or minimize employee exposure to the hazards associated with uncontrolled releases of highly hazardous chemicals.

The PSM standard is a comprehensive management program for highly hazardous chemicals that integrates technologies, procedures, and management practices to help assure safe and healthful workplaces. One of the key components of the PSM standard is the requirement that employers perform a process hazard analysis, which is a careful review of what could go wrong and what safeguards employers must implement to prevent uncontrolled releases. The PSM standard also mandates written operating procedures; employee training; prestartup safety reviews; evaluation of the mechanical integrity of critical equipment; and written procedures for managing change. In addition, the PSM standard specifies a permit system for hot work; investigation of incidents involving releases or near misses of covered chemicals; emergency-action plans; compliance audits at least every three years; and trade-secret protection.

While the PSM standard has been effective in improving process safety in the United States and protecting workers from many of the hazards associated with uncontrolled releases of highly hazardous chemicals, major incidents have continued to occur.

(1) On April 23, 2004, an explosion and fire at Formosa Plastics in Illiopolis, Illinois, killed five workers and severely injured three others. According to the U.S. Chemical Safety and Hazard Investigation Board's (CSB) report on the incident (CSB Report No, 2004–10–I–IL), while Formosa failed to properly implement many OSHA-required elements of its PSM program, modernization of the PSM standard to include several issues discussed below would likely have prevented or minimized the consequences of this incident. In 2005, OSHA reached a settlement agreement with Formosa with 48 citations, 31 of which were PSM citations, and fines totaling $300,000. The CSB report contains a detailed analysis of the root causes of this incident.

(2) On March 23, 2005, 15 workers died and more than 170 others were injured at the BP Refinery in Texas City, Texas. As a result of the incident, OSHA issued over 300 citations and fined BP over $21 million. Many of the citations were for PSM violations, including failing to properly implement mechanical integrity, training, and standard operating procedures. In a 2009 follow-up investigation, OSHA found numerous deficiencies at the BP Texas City Refinery and issued 270 failure-to-abate notices. In a 2010 settlement agreement with OSHA, BP agreed to pay a penalty of $50.6 million to resolve the notices.

(3) On April 2, 2010, an explosion and fire at the Tesoro refinery in Anacortes, Washington, killed seven workers. The incident occurred when a heat exchanger suddenly ruptured during maintenance, releasing a highly hazardous chemical that subsequently exploded. The company operated under the jurisdiction of the Washington State Department of Labor and Industries Division of Occupational Safety and Health (DOSH), which adopted OSHA's PSM standard into its state plan regulations at WAC 296–67. DOSH inspectors found that Tesoro failed to properly implement its PSM program by inadequately testing its equipment and continuing to operate failing equipment. As the result of the incident, DOSH issued 44 citations, 36 of which were PSM citations, to Tesoro, totaling $2.39 million. The root cause investigation is ongoing, however, modernization of the PSM standard to include several issues discussed below would likely have prevented or minimized the consequences of this incident.

(4) On April 17, 2013, an ammonium nitrate explosion at the West Fertilizer Company storage and distribution facility in West, Texas, killed at least 15 people—the majority of whom were firefighters responding to a fire at the facility—and injured over 160 others. The West Fertilizer facility is not currently covered by PSM, however it is a stark example of how potential modernization of the PSM standard may include such facilities and prevent future catastrophe.

[1] *https://www.osha.gov/SLTC/processsafetymanagement/.*

In 2007, OSHA initiated its Petroleum Refinery PSM National Emphasis Program (NEP) to reduce or eliminate the workplace hazards associated with the catastrophic release of highly hazardous chemicals in petroleum refineries. The program outlined a new approach for inspecting PSM-covered facilities that allowed for a greater number of inspections using better allocation of OSHA resources. In 2009, OSHA built upon that inspection program by implementing a pilot PSM-Covered Chemical Facilities NEP, which it later expanded into a full NEP. Under both of the PSM NEPs, OSHA was able to increase the number of PSM-covered facilities inspected and gained valuable inspection data.

C. Rulemaking and Enforcement Policy Change Options Under Consideration

OSHA has determined that revisions to its PSM standard may be needed to address issues in coverage. As specified in Executive Order 13650, the Agency is also considering related revisions to its Explosives and Blasting Agents standard to address potential issues in coverage; updates to its Flammable Liquids standard and Spray Finishing standard to better align with current versions of applicable consensus standards; and changes in its enforcement policies for these standards. OSHA identified a number of rulemaking and policy options through the Agency's PSM NEPs, its investigation of major accidents, and its review of recommendations from the safety community. OSHA identified the following topics as potential candidates for rulemaking or enforcement policy changes:

1. Clarifying the PSM exemption for atmospheric storage tanks;
2. Oil- and Gas-Well Drilling and Servicing;
3. Oil- and Gas-Production Facilities;
4. Expanding PSM Coverage and Requirements for Reactivity Hazards;
5. Updating the List of Highly Hazardous Chemicals in Appendix A of the PSM Standard;
6. Revising the PSM Standard to Require Additional Management-System Elements;
7. Amending Paragraph (d) of the PSM Standard to Require Evaluation of Updates to Applicable recognized and generally accepted good engineering practices (RAGAGEP);
8. Clarifying the PSM Standard by Adding a Definition for RAGAGEP;
9. Expanding the Scope of Paragraph (j) of the PSM Standard to Cover the Mechanical Integrity of Any Safety-Critical Equipment;
10. Clarifying Paragraph (l) of the PSM Standard with an Explicit Requirement that Employers Manage Organizational Changes;
11. Revising Paragraph (n) of the PSM Standard to Require Coordination of Emergency Planning with Local Emergency-Response Authorities;
12. Revising Paragraph (o) of the PSM Standard to Require Third-Party Compliance Audits;
13. Expanding the Requirements of § 1910.109 to Cover Dismantling and Disposal of Explosives, Blasting Agents, and Pyrotechnics;
14. Updating §§ 1910.106 and 1910.107 Based on the Latest Applicable Consensus Standards;
15. Updating the Regulations Addressing the Storage, Handling, and Management of Ammonium Nitrate;
16. Changing Enforcement Policy of the PSM Exemption for Retail Facilities; and
17. Changing Enforcement Policy for Highly Hazardous Chemicals Listed in Appendix A of the PSM Standard without Specific Concentrations.

The subsections below discuss each of these potential rulemaking topics in greater detail.

1. Clarifying the PSM Exemption for Atmospheric Storage Tanks

Pursuant to paragraph (a)(1)(ii) of § 1910.119, the PSM standard applies to processes involving a flammable liquid or gas on site in one location in a quantity of 10,000 pounds or more. However, paragraph (a)(1)(ii)(B) contains an exemption for ''[f]lammable liquids stored in atmospheric tanks or transferred which are kept below their normal boiling point without benefit of chilling or refrigeration.''

In *Secretary of Labor* v. *Meer Corporation* (1997) (OSHRC Docket No. 95–0341), an administrative law judge ruled that PSM coverage does not extend to flammables stored in atmospheric tanks, even if the tanks are connected to a process. As a result, employers can exclude the amount of flammable liquid contained in an atmospheric storage tank, or in transfer to or from storage, from the quantity contained in the process when determining whether a process meets the 10,000-pound threshold quantity. The *Meer* decision was contrary to OSHA's earlier interpretation [2] of paragraph (a)(1)(ii)(B), which was that the standard covered all stored flammables when connected to, or in close proximity to, a process.

OSHA believes that revising paragraph (a)(1)(ii)(B) to include flammable liquids in atmospheric storage tanks within or connected to a PSM covered processes would improve the safety of workers by remedying the issue in PSM enforcement that has existed since the *Meer* decision. In the questions in this RFI, the Agency requests comment on revising paragraph (a)(1)(ii)(B) to clarify that the PSM standard covers all stored flammables when connected to, or in close proximity to, a process.

2. Oil- and Gas-Well Drilling and Servicing

Paragraph (a)(2)(ii) of § 1910.119 exempts oil- and gas-well drilling and servicing operations from PSM coverage. The preamble to the PSM final rule explained that OSHA excluded these operations because it had begun a separate rulemaking for oil and gas well drilling and servicing operations (48 FR 57202). However, the Agency subsequently removed the oil and gas well drilling and servicing operations rulemaking from its regulatory agenda and never promulgated a final rule for these operations. In light of this history, OSHA requests public comment on whether to retain or remove the § 1910.119(a)(2)(ii) exemption.

3. Oil- and Gas-Production Facilities

On March 4, 1998, a catastrophic vessel failure and fire killed four workers at an oil- and gas-production facility near Pitkin, Louisiana, owned by Sonat Exploration Company. Sonat was using well fluid to purge air from a two-mile pipeline that connected a separation facility to a production well when the separation vessel failed. In its investigation report on the incident (Report No. 1998–002–I–LA), the CSB stated that ''[t]wo elements of the PSM standard, process hazard analyses and written operating procedures, are particularly relevant to the Sonat incident.'' The CSB further concluded that ''[t]he incident would likely have been prevented if process safety management principles or good engineering practice had been followed more effectively at the facility.''

The exemption in § 1910.119(a)(2)(ii) does not extend to oil- and gas-well production operations such as the Sonat facility noted in the previous paragraph. A December 20, 1999, memo from Compliance Programs director Richard Fairfax to OSHA regional administrators, entitled *PSM Applicability to Oil/Gas Production Facilities,* explained that ''production

[2] *https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9760.*

facilities . . . were always intended to be covered under PSM.'' The memo described covered production operations as follows:

> Production, as recognized by the petroleum industry, is a phase of well operations that deals with bringing well fluids to the surface, separating them, and then storing, gauging and otherwise preparing the product for the pipeline. This production phase occurs after a well has been drilled, completed, and placed into operation, or after it has been returned to operation following workover or servicing. A completed well includes a ''Christmas tree'' (control valves, pressure gauges and choke assemblies to control the flow of oil and gas) which is attached at the top of the well where pressure is expected. It is at this point, the top of the well, where the covered PSM process begins. The distance between separation equipment and the well is not a factor when determining PSM applicability for production facilities.

The American Petroleum Institute (API) objected to the December 20, 1999, memo, asserting that PSM coverage of oil- and gas-production facilities was invalid because OSHA did not conduct an economic analysis during the original PSM rulemaking proceedings addressing such coverage. In a March 7, 2000, letter to API, OSHA conceded that the original economic analysis for the PSM standard did not include oil- and gas-production operations, and stated further that the Agency would suspend enforcement of the PSM standard for oil- and gas-production operations until it performed the analysis. OSHA is considering completing this analysis so that it can resume enforcement of the PSM standard for oil- and gas-production facilities.

OSHA believes that implementation of an effective PSM program in accordance with the requirements in § 1910.119 by oil and gas production facilities could prevent or mitigate accidents like the Sonat explosion. In the questions in this RFI, the Agency requests public comment on completing an economic analysis and possibly resuming enforcement for PSM-covered oil- and gas-production facilities. OSHA will review the comments received to determine what action, if any, the Agency will take.

4. Expanding PSM Coverage and Requirements for Reactivity Hazards

Paragraph (a) of § 1910.119 states that the standard applies to any ''process which involves a chemical at or above the specified threshold quantities listed in Appendix A,'' and to any ''process which involves a Category 1 flammable gas (as defined in 1910.1200(c)) or a flammable liquid with a flashpoint below 100 °F (37.8 °C) on site in one location, in a quantity of 10,000 pounds (4535.9 kg),'' unless the process meets one of the exceptions in § 1910.119(a)(1)(ii)(A) and (B). Appendix A of § 1910.119 contains a list of 137 highly hazardous chemicals that present a potential for a catastrophic event at or above the listed threshold quantities. A number of the chemicals listed in Appendix A are highly reactive chemicals based on a variety of metrics, including consensus standard sources, but the list does not cover all highly reactive chemicals.

OSHA has long been aware of the need to update the PSM standard to address hazards associated with reactive chemicals. In response to a 1995 chemical explosion that killed five workers at Napp Technologies, Inc., in Lodi, New Jersey, OSHA received a petition to revise its PSM standard to address reactivity hazards. OSHA and the U.S. Environmental Protection Agency (EPA) investigated the Napp Technologies accident and concluded in a jointly issued 1997 report (EPA–550–R–97–002) that the explosion was most likely triggered by an uncontrolled chemical reaction of water, sodium hydrosulfite, and aluminum powder. Aluminum powder and sodium hydrosulfate are relatively stable chemicals, with instability/reactivity ratings [3] of one [4] and two,[5] respectively. However, when both of these chemicals are mixed with water the reaction is extremely hazardous. In 2000, OSHA added an advance notice of proposed rulemaking (ANPRM) for reactive chemicals (RIN 1218–AB63) to its regulatory agenda. However, OSHA removed the item from its regulatory agenda in 2002 and never published the ANPRM. In 2003, the labor unions re-filed their petition for OSHA to revise its PSM standard to address reactivity hazards.

The CSB has also made a number of recommendations to OSHA on how the PSM standard could be amended to more comprehensively control reactive hazards. In a 2002 report, the CSB broadly recommended that OSHA extend PSM coverage to chemicals based on a class of highly reactive properties, similar to the way the existing PSM standard defines a class of flammable liquids or gases. The CSB explained that a performance-based approach to evaluating reactive hazards would allow for both a comprehensive analysis and flexibility in implementation, but it cautioned that a proper hazard analysis of reactive hazards would require expertise in reactivity hazards.

One approach to regulating reactive hazards is the New Jersey Toxic Catastrophe Prevention Act (TCPA). Enacted in 1986, the TCPA is a New Jersey statute that contains many process safety elements similar to the PSM standard, but the TCPA differs from PSM by explicitly covering reactive hazards, including reactive mixtures. Unlike the PSM standard, which contains only one list of covered hazardous chemicals in Appendix A, the TCPA contains multiple lists. This includes the List of Individual Reactive Hazardous Substances, as well as a list of Reactive Hazard Substances Mixture Functional Groups. N.J.A.C. 7:31–6.3(a), Table I, Part D, Group I, N.J.A.C. 7:31–6.3(a), Table I, Part D, Group II. These functional groups include certain molecular structures that have been identified as highly reactive, based on scientific research and accident history. Under the TCPA, covered facilities must determine if any of the chemicals they are intentionally mixing include components on the Functional Group list. If so, then the facility must determine the heat of the reaction and the corresponding threshold quantity for TCPA coverage. This approach takes into account not only certain specific chemicals, but also their overall reactivity in determining the level of coverage.

In the questions in this RFI, OSHA invites comment on different regulatory approaches to covering reactive hazards, including the approach used in the TCPA.

5. Updating the List of Highly Hazardous Chemicals in Appendix A of the PSM Standard

Appendix A of § 1910.119 contains a list of 137 highly hazardous chemicals that present a potential for a catastrophic event at or above the threshold quantity of the standard. OSHA compiled the Appendix A list of chemicals from multiple sources, including:

- New Jersey's Toxic Chemical Prevention Act;
- Delaware's Extremely Hazardous Substances Risk Management Act;
- The World Bank's *Manual of Industrial Hazard Assessment Techniques;*
- U.S. Environmental Protection Agency's List of Extremely Hazardous Substances;

[3] Instability/reactivity ratings listed are set by the National Fire Protection Association's Standard System for the Identification of the Hazards of Materials for Emergency Response (NFPA 704).

[4] NFPA 704 instability/reactivity of one: ''normally stable, but can become unstable at elevated temperatures and pressures.''

[5] NFPA 704 instability/reactivity of two: ''undergoes violent chemical change at elevated temperatures and pressures.''

- U.S. Department of Transportation's *Emergency Response Guidebook;*
- Council of the European Communities' *Council Directive of June 24, 1982, on the Major Accident Hazards of Certain Industrial Activities* (82/501/EEC);
- United Kingdom Health and Safety Executive's *A guide to the Control of Major Accident Hazards Regulations 1999 (as amended);*
- API's *Recommended Practice 750—Management of Process Hazards;*
- National Fire Protection Association's (NFPA) *NFPA 49—Hazardous Chemicals Data;* and
- Organization Resources Counselors, Inc.'s *Recommendations for Process Hazards Management of Substances with Catastrophic Potential.*

Every chemical listed in Appendix A appeared in at least one of these sources as warranting a high degree of management control due to its extremely hazardous properties; most of the chemicals appeared in several of the sources.

Appendix A has remained unchanged since OSHA promulgated the PSM standard in 1992. In the questions in this RFI, OSHA requests public comment on which chemicals, if any, the Agency should add to Appendix A through rulemaking. OSHA further seeks comment on methods for periodically updating Appendix A to ensure adequate protection of workers in PSM-covered facilities when new hazards are discovered and as technology and advancements in chemical science evolve.

6. Revising the PSM Standard To Require Additional Management-System Elements

Executive Order 13650 requires OSHA to ''identify issues related to modernizing the PSM standard.'' When OSHA promulgated the PSM standard in 1992, the standard adopted management-system elements based on best practices from industry at the time. However, best practices have continued to evolve since 1992 and additional management-system elements may now be recognized to be necessary to protect workers. In this RFI, OSHA seeks public comment on additional management-system elements that would increase worker protection if required under the PSM standard.

The Center for Chemical Process Safety (CCPS) is an example of a safety organization that recommends additional management-system elements. CCPS specifies in its Risk Based Process Safety (RBPS) program 20 different management-system elements, a number of which are not included in the PSM standard. One such RBPS element is ''Measurement and Metrics,'' described by CCPS as a system for establishing indicators to track the effectiveness of the management system.[6] In this element, the employer typically uses metrics to track leading and lagging safety indicators, and to identify opportunities for improvement. Another RBPS element is ''Management Review and Continuous Improvement,'' which CCPS describes as ''the ongoing 'due diligence' review by management that fills the gap between day-to-day work activities and periodic formal audits.'' [7] A third RBPS element is ''Process Safety Competency,'' which CCPS explains ''encompasses three interrelated actions: (1) Continuously improving of knowledge and competency, (2) ensuring that appropriate information is available to people who need it, and (3) consistently applying what has been learned.'' [8]

OSHA also is considering adopting management-system elements from safety standards that other federal agencies promulgated since 1992. For example, the Bureau of Safety and Environmental Enforcement's (BSEE) Revisions to Safety and Environmental Management Systems (SEMS II) final rule (78 FR 20423; 04/05/2013), which revised a number of requirements in 30 CFR 250, Subpart S, contains management-system elements not included in the PSM standard. In its *SEMS II Fact Sheet (April, 2013)* [9], BSEE describes three of the main additional elements as follows:

- Developing and implementing a stop work authority that creates procedures and authorizes any and all offshore industry personnel who witness an imminent risk or dangerous activity to stop work.
- Developing and implementing an ultimate work authority that requires offshore industry operators to clearly define who has the ultimate work authority on a facility for operational safety and decision-making at any given time.
- Requiring an employee participation plan that provides an environment that promotes participation by offshore industry employees as well as their management to eliminate or mitigate safety hazards.

OSHA invites public comment on any additional management-system elements, or on expanding existing elements, including those elements discussed in this RFI to improve worker protection in facilities covered under the PSM standard. The Agency requests that commenters submit data and information on management-system elements from consensus standards, safety organizations, federal standards, or other sources that could increase worker safety if OSHA expanded the PSM standard to include the elements.

7. Amending Paragraph (d) of the PSM Standard To Require Evaluation of Updates to Applicable RAGAGEP

Paragraph (d)(3)(ii) of § 1910.119 requires employers to document that covered equipment complies with RAGAGEP. ''For existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use,'' paragraph (d)(3)(iii) of § 1910.119 further requires employers to ''determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.'' However, the PSM standard does not require employers to evaluate updates to applicable RAGAGEP or to examine new RAGAGEP after evaluating and documenting compliance with either § 1910.119(d)(3)(ii) or (iii).

Through extensive collaboration and evaluation of incidents, many safety organizations periodically update their standards to improve work practices and protect workers against newly identified hazards. Since the practices constituting RAGAGEP under the PSM standard are constantly changing as a result of this process, evaluating updates to applicable RAGAGEP ensures that employers base a facility's PSM program on the most up-to-date and accurate safety information available.

An accident that occurred at a Formosa Plastics facility in Point Comfort, Texas, on October 6, 2005, illustrates the importance of evaluating updates to applicable RAGAGEP. A trailer towed by a forklift became snagged and pulled a small drain valve out of a strainer in a liquid propylene system at the facility. Escaping propylene rapidly vaporized, causing a series of explosions and fires that injured 16 workers. According to the CSB's investigation report on the incident (CSB Report No. 2006–01–I–TX), Formosa and the company that sold the plant design failed to evaluate updates to applicable RAGAGEP for fireproofing structural steel that supports critical safety systems. The CSB concluded in its report that had Formosa fireproofed the steel according to more recent RAGAGEP, then ''the consequences of this incident would likely have been less severe.'' OSHA invites public comment on the best approach to revising paragraph (d) of

[6] *Guidelines for Risk Based Process Safety,* CCPS. *http://www.aiche.org/ccps.*

[7] *Ibid.*

[8] *Ibid.*

[9] *http://www.bsee.gov/BSEE-Newsroom/BSEE-Fact-Sheet/SEMS-II-Fact-Sheet.aspx.*

the PSM standard to require employers to evaluate updates to applicable RAGAGEP could help prevent or mitigate accidents like the October 6, 2005, Formosa explosion, and increase worker protection in PSM-covered facilities.

8. Clarifying the PSM Standard by Adding a Definition for RAGAGEP

The term ''recognized and generally accepted good engineering practices'' (RAGAGEP) appears in paragraphs (d)(3)(ii) and (j)(4)(ii) of § 1910.119, but the PSM standard does not contain a definition for the term. For guidance purposes, OSHA's Petroleum Refinery NEP directive (CPL 03–00–010) provides one example of a RAGAGEP definition from CCPS's *Guidelines for Mechanical Integrity Systems:*

> Recognized And Generally Accepted Good Engineering Practices'' (RAGAGEP)—are the basis for engineering, operation, or maintenance activities and are themselves based on established codes, standards, published technical reports or recommended practices (RP) or similar documents. RAGAGEPs detail generally approved ways to perform specific engineering, inspection or mechanical integrity activities, such as fabricating a vessel, inspecting a storage tank, or servicing a relief valve.

Although the CCPS's definition of RAGAGEP is not an official OSHA definition, it is consistent with OSHA's intent when it promulgated the standard. In its PSM proposal, OSHA would have required employers to follow commonly accepted consensus standards and industry codes. 55 FR 29150, 29155 (July 17, 1990). In promulgating the final rule, OSHA changed the requirement that employers comply with applicable published codes to the requirement that they comply with ''recognized and generally accepted good engineering practices.'' In making this change, OSHA explained that RAGAGEP would include codes and standards published by organizations such as NFPA, ASTM, and ANSI, as well as ''appropriate internal standards.'' 57 FR at 6390–91. OSHA made the change in response to comments expressing a number of concerns about the proposed language. These included comments about employers' difficulties in obtaining relevant codes and standards, potential confusion on which codes were required by OSHA in a given situation, the possibility that codes and standards could become outdated, and the inability of employers to use more stringent internal standards. OSHA believed it was clear from the context of this change that it intended ''appropriate internal standards'' to be those employers developed when published codes and standards were unavailable or outdated, or that were more stringent than published standards. 57 FR at 6390–91. However, OSHA did not include a definition of RAGAGEP in the standard itself.

In this RFI, OSHA invites public comment on whether the Agency should clarify the PSM standard by including an explicit definition of RAGAGEP in § 1910.119 to assist employers in complying. OSHA requests that commenters specify if the Agency should adopt the CCPS's definition of RAGAGEP in § 1910.119, or any other appropriate definition, and whether inclusion of a definition would increase worker protection and enhance process safety.

9. Expanding the Scope of Paragraph (j) of the PSM Standard To Cover the Mechanical Integrity of Any Safety-Critical Equipment

Paragraph (j) of § 1910.119 requires employers to implement an ongoing mechanical-integrity program with respect to their PSM-covered processes. For processing, storing, or handling highly hazardous chemicals, employers must use equipment designed, constructed, installed, and maintained to minimize the risk of an uncontrolled release. Elements of an effective mechanical-integrity program include: Identifying and categorizing equipment and instrumentation; inspecting and testing their frequency; maintaining procedures; training maintenance personnel; having criteria for acceptable test results; documenting test and inspection results; and documenting manufacturer recommendations for equipment and instrumentation.

Paragraph (j)(1) states that the mechanical-integrity requirements of the PSM standard apply to: Pressure vessels and storage tanks; piping systems (including piping components such as valves); relief and vent systems and devices; emergency shutdown systems; controls (including monitoring devices and sensors, alarms, and interlocks); and pumps. In the preamble to the PSM final rule, OSHA explained that ''if an employer deems additional equipment to be critical to a particular process, that employer should consider that equipment to be covered by this paragraph and treat it accordingly'' (57 FR 6389, February 24, 1992). In light of the limited list of covered equipment in paragraph (j)(1), OSHA addresses hazards associated with other types of safety-critical equipment through citations for violations of Section 5(a)(1) of the OSH Act.

Revising paragraph (j) to explicitly apply the mechanical-integrity requirements of the PSM standard to all equipment the employer identifies as critical to process safety-critical equipment, in addition to the equipment currently listed in the standard, would provide industry with proper notice regarding coverage of such equipment. OSHA invites comment on whether the addition of this provision to paragraph (j) will increase worker safety and whether any further clarifying revisions would be recommended to ease implementation.

10. Clarifying Paragraph (l) of the PSM Standard With an Explicit Requirement That Employers Manage Organizational Changes

Paragraph (l) of § 1910.119 requires employers to establish and implement written procedures to manage change, including all modifications to equipment, technology, procedures, raw materials, and processing conditions other than replacements in kind. Temporary changes are subject to the management-of-change requirements of the standard. Employers must properly identify and review all PSM-covered changes before implementation.

The existing standard does not explicitly state that employers must follow management-of-change procedures for organizational changes,[10] such as changes in management structure, budget cuts, or personnel changes; however, as noted in a March 31, 2009, Memorandum for Regional Administrators from Richard Fairfax,[11] it is OSHA's position that paragraph (l) covers organizational changes if the changes have the potential to affect process safety. Since the original promulgation of the PSM rule, it has become well established in the safety community that organizational changes can have a profound impact on worker safety and, therefore, employers should evaluate organizational change like any other change. Illustrating the significant hazards that organizational changes can produce, the CSB identified a lack of organizational management of change as a significant factor behind the 2005 BP Texas City Refinery accident that killed 15 workers and injured over 170 others (CSB Report No. 2005–04–I–TX). OSHA invites comments on whether revising

[10] CCPS provides the following examples of organizational changes: ''a reduction in the number of operators on a shift, a change in the maintenance contractor for the site, changing from 5-day operation to 7-day operation, or rotation of plant managers.'' *Guidelines for the Management of Change for Process Safety,* CCPS.

[11] *https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=28628.*

paragraph (l) to clarify that the PSM standard's organizational management-of-change requirements will increase worker safety.

11. Revising Paragraph (n) of the PSM Standard To Require Coordination of Emergency Planning With Local Emergency-Response Authorities

Paragraph (n) of § 1910.119 requires employers to establish and implement an emergency-action plan in accordance with § 1910.38, OSHA's Emergency Action Plans (EAP) standard, and to meet applicable requirements in paragraphs (a), (p), and (q) of § 1910.120, the Agency's Hazardous Waste Operations and Emergency Response (HAZWOPER) standard. While some OSHA standards, such as § 1910.146, Permit-Required Confined Spaces, require employers to coordinate emergency planning with local emergency-response authorities, the existing PSM standard does not contain such a requirement. Existing §§ 1910.38 and 1910.120 do not require coordination of emergency planning with outside parties if the employer chooses to evacuate employees from the danger area when an emergency occurs that does not permit employees to assist in handling the emergency.

When emergency responders and other workers do not have adequate information or employer coordination about hazardous chemicals in a facility, they are at elevated risk of death and serious injury. On April 17, 2013, an ammonium nitrate explosion at the West Fertilizer Company storage and distribution facility in West, Texas, killed at least 15 people—the majority of whom were firefighters responding to a fire at the facility—and injured over 160 others.[12] OSHA believes that revising paragraph (n) of the PSM standard to require facilities to coordinate emergency planning with local emergency-response authorities could help prevent or mitigate similar accidents by allowing first responders to develop the appropriate strategies in advance of their arrival and seeks comment on the appropriate mechanism and corresponding language to incorporate such coordination requirements into paragraph (n).

12. Revising Paragraph (o) of the PSM Standard To Require Third-Party Compliance Audits

Paragraph (o)(1) of § 1910.119 requires employers to audit the PSM program in their facilities for compliance every three years. Paragraph (o)(2) further requires that the audits ''be conducted by at least one person knowledgeable in the process.'' However, § 1910.119 does not require employers to use a third party in conducting the compliance audits. According to CCPS, ''Third party auditors (typically, consulting companies who can provide experienced auditors) potentially provide the highest degree of objectivity.'' [13]

It is notable that BSEE's Safety and Environmental Management Systems (SEMS) standard, 30 CFR 250, Subpart S, requires audits conducted by an independent third party, subject to approval by BSEE, or by designated and qualified personnel if the employer implements procedures to avoid conflicts of interest. In addition, BSEE's SEMS II revisions to the standard require that, by June 4, 2015, the team lead for compliance audits must be independent and represent an accredited audit service provider. In the preamble to its SEMS II final rule, BSEE discussed its third-party-auditing requirements as follows:

> Consistent audits performed by well trained and experienced auditors are critical to ensuring that SEMS programs are successfully implemented and maintained on the OCS. As a result, we are adopting industry best practices related to SEMS audits and auditor qualifications. Industry is already voluntarily adopting these practices in many deepwater operations. We believe that the application of these requirements to all OCS operations will result in more robust and consistent SEMS audits. (78 FR 20430; 04/05/2013.)

In its investigation report on the 2005 BP Texas City Refinery explosion, the CSB identified a lack of rigorous compliance audits as a contributing factor behind the accident. As the CSB noted in its report, the resulting settlement agreement [14] between OSHA and BP required BP to retain a third-party compliance auditor with PSM expertise, subject to approval by OSHA, to assess the company's PSM program. OSHA is aware that third-party compliance auditors exist and are already utilized by some of the PSM regulated community. In the questions in this RFI, OSHA seeks comment on whether revising paragraph (o) of the PSM standard to require employers to use a qualified third party for compliance audits would increase worker protection through a more rigorous and objective PSM auditing process.

OSHA is also seeking comment on increasing the required frequency of compliance audits. In addition, the Agency is seeking comment on requiring specific timeframes for responding to deficiencies found in the compliance audit process.

13. Expanding the Requirements of § 1910.109 To Cover Dismantling and Disposal of Explosives, Blasting Agents, and Pyrotechnics

Paragraph (k)(1) of § 1910.109 provides that the standard applies to ''the manufacture, keeping, having, storage, sale, transportation, and use of explosives, blasting agents, and pyrotechnics,'' and does not apply to the sale and use of fireworks or the use of explosives in the form prescribed by the U.S. Pharmacopeia.[15] [16] Although dismantling and disposing of explosives can be just as hazardous as the covered activities listed in paragraph (k), dismantling and disposal are not activities that the existing standard covers.

On April 8, 2011, an accidental explosion in Waikele, Hawaii, killed five workers who were disposing of fireworks seized by the Federal Government as contraband. The workers, employed by contractor Donaldson Enterprises, Inc., were disassembling the firework tubes by hand and separating black powder and aerial shells into plastic-lined cardboard boxes, which they then soaked in diesel for burning. The CSB investigated the explosion and determined (CSB Report No. 2011–06–I–HI) that gaps in federal regulations—specifically with regard to dismantling and disposal of explosives—contributed to the accident. Hawaii administers its own state safety and health program approved under the OSH Act, and adopted the federal OSHA standards in their entirety.

OSHA believes that expanding the scope of § 1910.109(k) to cover dismantling and disposal of explosives, blasting agents, and pyrotechnics, in the

[12] *Following the West, Texas facility explosion, OSHA and partner agencies EPA and ATF issued updated guidance on Ammonium Nitrate. See, Chemical Advisory: Safe Storage, Handling, and Management of Ammonium Nitrate,* EPA 550–S–13–001, EPA, OSHA, and ATF, August, 2013.

[13] *Guidelines for Risk Based Process Safety,* CCPS. *http://www.aiche.org/ccps.*

[14] United States of America Occupational Safety and Health Administration, BP Products North America Inc. Settlement Agreement, September 21, 2005.

[15] The U.S. Pharmacopeial Convention (USP) is a scientific nonprofit organization that sets standards for the identity, strength, quality, and purity of medicines, food ingredients, and dietary supplements manufactured, distributed and consumed worldwide. *http://www.usp.org/about-usp.*

[16] OSHA has no data showing an increase in accidents with this activity and is not seeking comment on changing this exclusion.

workplace in addition to the activities covered under the existing standard, would prevent tragic accidents similar to the Hawaii accident. While the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives exercises jurisdiction over many aspects of the explosives industry through its Commerce in Explosives standard at 27 CFR Part 555, OSHA seeks comment on whether expanding the scope of 29 CFR 1910.109 to address hazards associated with dismantling and disposal of explosives would lead to increased worker protection and whether ATF's current regulations would make any revisions to OSHA's regulations duplicative.

14. Updating §§ 1910.106 and 1910.107 Based on the Latest Applicable Consensus Standards

OSHA is considering updating its Flammable Liquids standard and Spray Finishing standard. OSHA first published these standards in 1974 and based the requirements on NFPA consensus standards from the 1960s. The format and requirements of the standards are significantly out of date, and need updating based on the latest applicable consensus standards.[17] OSHA seeks recommendations on updates that should be considered and comments on how such updates will lead to increased worker protection.

15. Updating the Regulations Addressing the Storage, Handling, and Management of Ammonium Nitrate

Industry manufactures millions of tons of ammonium nitrate annually in the United States. Consumers commonly use high-density ammonium nitrate in fertilizer and use low-density ammonium nitrate in making explosives. The NFPA assigns a reactivity rating of 3 (in a range of 0–4) to ammonium nitrate, which means that it is capable of detonation, explosive decomposition, or explosive reaction; ignition requires a strong initiating source or heating the substance under confinement. Stored ammonium nitrate is generally stable, but explosions of ammonium nitrate can be severe and have resulted in many injuries and fatalities. OSHA's requirements for storage of ammonium nitrate are contained in § 1910.109, and are based on a 1970 NFPA consensus standard.

As discussed earlier in this RFI, on April 17, 2013, an ammonium nitrate explosion at the West Fertilizer Company storage and distribution facility in West, Texas, killed at least 15 people and injured over 160 others leading OSHA and its partner agencies EPA and ATF to issue an updated chemical advisory on the safe storage, handling, and management of ammonium nitrate.[18] An ammonium nitrate explosion that occurred in Texas City, Texas, on April 16, 1947, was the deadliest industrial accident in United States history. In that case, the initial explosion of a ship carrying ammonium nitrate, and the subsequent chain reaction of fires and explosions in other ships and nearby oil-storage facilities, killed at least 581 people and injured thousands of others.[19]

In the questions in this RFI, OSHA invites comment on safe work practices for storing, handling, and managing ammonium nitrate. OSHA further seeks comment on how to update its regulatory requirements to improve its approach to preventing the hazards associated with ammonium nitrate.

16. Changing Enforcement Policy of the PSM Exemption for Retail Facilities

The PSM standard contains an exemption from coverage for retail facilities at 29 CFR 1910.119(a)(2)(i). Although the term ''retail facility'' is not defined, the Preamble to the Final PSM standard noted that chemicals in retail facilities are generally in small packages, containers, and allotments, and gives the example of gasoline stations as a type of facility that would typically qualify for the exemption. 57 FR 6356, 6369 (February 24, 1992).

Other Federal Government agencies have explicit definitions of retail facilities. In particular, the U.S. Department of Commerce, which is responsible for the development of the North American Industry Classification System (NAICS) that organizes businesses into specific industrial sectors for economic and statistical purposes, characterizes retail trade as follows:

> The Retail Trade sector comprises establishments engaged in retailing merchandise, generally without transformation, and rendering services incidental to the sale of merchandise. The retailing process is the final step in the distribution of merchandise; retailers are, therefore, organized to sell merchandise in small quantities to the general public.

North American Industry Classification System Manual (''NAICS Manual''), Sector 44–45—Retail Trade.

OSHA has stated that this NAICS Manual definition applies in interpreting the retail exemption. In a November 8, 1995, memo from Enforcement Programs director Richard Fairfax to Acting Region 10 Administrator Richard S. Terrell, OSHA distinguished retail end users from wholesale end users:

> [T]he ''retail facilities'' exception is intended to apply to an establishment in the retail trade as delineated in the Standard Industrial Classification (SIC) Manual. With exceptions, retail trade establishments sell merchandise to the general public for personal or household consumption. On the other hand, wholesale trade establishments may sell similar merchandise for exclusive use by industry . . . Income derived from selling [merchandise] to industry may not be counted as ''income obtained from direct sales to end users'' for the purpose of qualifying for the ''retail facilities'' exception under paragraph 1910.119(a)(2)(i).

Notwithstanding this general statement, OSHA has also issued letters saying that a facility that is primarily engaged in selling anhydrous ammonia product to farmers (a wholesale operation under the NAICS definition) could qualify for the § 1910.119(a)(2)(i) retail-facilities exemption. For example, the January 26, 2001 letter from Richard Fairfax to J.D. Varn III of Varnco, Inc. which states that a facility selling 75% of its anhydrous ammonia to farmers qualifies for the retail exemption because the farmers were the ''end users'' of the product.

Applying the retail-facility exemption in this way is inconsistent with the normal meaning of ''retail'' and the preamble's explanation of the purpose of the exemption. As stated in the preamble, OSHA chose to exclude retail facilities from PSM coverage because the limited container, package, or allotment sizes of the chemicals typically found at these facilities do not present the same safety hazards as those encountered at establishments working with large, bulk quantities of materials. Facilities selling large or bulk quantities of materials would typically fall into Sector 42—Wholesale Trade of the NAICS system, which includes facilities that sell or arrange the purchase or sale of raw and intermediate materials and supplies used in production. As a result of increased workplace hazards associated with large, bulk quantities of highly hazardous chemicals, OSHA believes that only retail-trade facilities listed in NAICS sectors 44 and 45 that sell highly hazardous chemicals in small containers, packages, or allotments to the general public qualify for the retail-facilities exemption in 29 CFR 1910.119(a)(2)(i).

[17] Applicable consensus standards may include, but are not limited to: NFPA 30, NFPA 30A, NFPA 30B, NFPA 33.

[18] *Chemical Advisory: Safe Storage, Handling, and Management of Ammonium Nitrate,* EPA 550–S–13–001, published by EPA, OSHA, and ATF, August, 2013.

[19] *Texas City, Texas, Disaster, April 16, 17, 1947.* Fire Prevention and Engineering Bureau of Texas, 1947.

In light of OSHA's inconsistent statements on the application of the retail exemption, the Agency is inviting comment on what the exemption should cover and whether OSHA's current enforcement policy adequately addresses workplace hazards associated with these facilities.

17. Changing Enforcement Policy for Highly Hazardous Chemicals Listed in Appendix A of the PSM Standard Without Specific Concentrations

Appendix A of the PSM standard lists highly hazardous chemicals and threshold quantities that must be met to establish PSM coverage. Although Appendix A provides specific concentrations for 11 of its listed chemicals, the standard is silent on concentrations for the remaining 126 listed chemicals. For example, Appendix A lists hydrogen peroxide at concentrations of 52% by weight or greater, but the appendix does not provide a specific concentration for hydroxylamine. OSHA has issued interpretation letters taking a variety of positions regarding coverage of chemicals that have no listed concentration. Under one such approach, OSHA considers PSM coverage to apply if threshold quantities of such chemicals are present at commercial grade. As noted in a 1994 Letter of Interpretation from Compliance Programs Deputy Direction H. Berrien Zettler to Mr. Luc Hamelin of IVACO, Inc., OSHA defined commercial grade to mean ''a typical maximum concentration of the chemical that is commercially available and shipped.'' The letter added that, to determine commercial grade concentrations, an employer may refer to any published catalogue of chemicals for commercial sales.

In 1999, an explosion at Concept Sciences, Inc. in Allentown, Pennsylvania, killed five people as the company was attempting to produce concentrated hydroxylamine. A U.S. District Court dismissed a subsequent criminal indictment related to this incident based on inconsistencies in OSHA's statements regarding coverage of hydroxylamine. The Court pointed out that the PSM standard is ambiguous with respect to concentrations of Appendix A chemicals. It concluded that in light of a series of OSHA letters that were themselves inconsistent, no reasonable person in the defendant's position could determine how a chemical is covered by the standard. *U.S. v. Ward,* 21 BNA OSHC 1882, 1884 (2001). In light of this, OSHA believes it is important to issue a clear and authoritative statement about PSM coverage of chemicals for which Appendix A does not include a specific concentration.

With respect to the commercial grade approach, OSHA also realizes that it is difficult to determine the maximum commercial grade of many of the highly hazardous chemicals listed in Appendix A. In addition, the maximum commercial grade of a chemical may change over time due to technological innovation or changes in industry. Furthermore, even where the concentration of a PSM-listed highly hazardous chemical falls below the correctly determined maximum commercial grade, the chemical may still present a hazard because substances in a mixture retain their original properties. For example, a solution of any concentration of hydroxylamine can form pure hydroxylamine crystals, which can rapidly decompose and cause fires or explosions.

An interpretative approach that is consistent with the regulatory language and that addresses this concern is the approach currently used by EPA under the Risk Management Program (RMP). Similar to OSHA's list of highly hazardous chemicals in Appendix A of the PSM standard, the EPA RMP provides a list of toxic substances in 40 CFR 68, Appendix A—Table of Toxic Endpoints. However, in contrast to OSHA's ''commercial grade'' policy for PSM-listed chemicals, EPA considers a mixture containing an RMP-listed substance to be covered if the concentration is greater than one percent and the calculated weight of the substance in the mixture is greater than the threshold quantity.[20] With a few exceptions, this rule does not apply in cases where the operator can demonstrate that the partial pressure of the substance in the mixture is less than 10 mmHg.

OSHA invites comment on whether it should adopt the EPA's policy for RMP-listed substances as a simpler and more practical approach to addressing hazards associated with Appendix A chemicals that do not have listed concentrations. If OSHA adopts this policy, the Agency would consider a PSM-listed chemical in a mixture to be covered if the concentration of the chemical were greater than one percent and the calculated weight of the chemical in the mixture were greater than the threshold quantity. OSHA believes this represents a more practical, consistent, and straightforward approach to coverage of Appendix A chemicals under the PSM standard.

D. Effects of Possible Regulatory and Policy Changes

As part of this RFI, the Agency is requesting data and information on the potential economic impacts of each option. OSHA requests that commenters discuss potential economic impacts, whenever possible, in terms of quantitative benefits (e.g., reductions in injuries, fatalities, and property damage), costs (e.g., compliance costs or decreases in production), and offsets to costs (e.g., less need for maintenance and repairs) when responding to the questions in this RFI. OSHA also requests that commenters provide data and information on economic effects that the options may have on market conditions or services (e.g., market structure and concentration). In addition, OSHA invites public comment on unintended consequences and consistencies or inconsistences with other policies or regulatory programs.

OSHA requests that commenters discuss economic impacts in as specific terms as possible. For example, if a rulemaking or policy change would necessitate additional employee training, then helpful information would include the following: the training courses necessary; the types of employees who would receive the training; the length and frequency of the courses; topics covered; any retraining necessary; and the training costs if conducted by a third-party vendor or in-house trainer. The Agency invites comment on the time and level of expertise required to implement potential changes discussed in this RFI, even if dollar-cost estimates are not available. For discussion of equipment-related costs, OSHA requests that commenters estimate relevant factors such as purchase price, cost of installation, cost of equipment maintenance, cost of training, and expected life of the equipment.

E. Impacts on Small Entities

The Agency would like to determine whether the options in this RFI will have a significant economic impact on a substantial number of small entities. If the options have such impacts, then under the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, OSHA must, if it engages in rulemaking, develop a regulatory flexibility analysis and assemble a Small Business Advocacy Review Panel before publishing a proposal. Regardless of the economic impacts, OSHA seeks ways of minimizing burdens on small entities

[20] *General Guidance On Risk Management Programs For Chemical Accident Prevention (40 CFR Part 68);* EPA 555–B–04–001; U.S. EPA; March 2009.

consistent with OSHA's statutory and regulatory requirements and objectives. The Agency requests that, when responding to the questions in this RFI, commenters discuss any special circumstances related to small entities, such as potential market-structure disruptions or uniquely high costs that small entities may bear.

II. Request for Data, Information, and Comments

OSHA is providing the following questions to collect data, information, and comments on the options discussed in this RFI. The Agency invites the public to respond to any questions for which they have specific knowledge, data, or information, regardless of their involvement in PSM-covered operations.

OSHA would appreciate detailed responses to the following questions. When responding, please reference the specific question number to which you are responding.

A. General Information

1. To assist in classifying comments, please provide information on the workplace (or industry) about which you are commenting, including the type of facility, NAICS code (if available), number of employees, types and volumes of chemicals handled, when the facility began operation, and other relevant information.

2. If you are commenting about a specific workplace or industry, does the workplace or industry conduct operations covered by the PSM standard? Please explain.

B. Clarifying the PSM Exemption for Atmospheric Storage Tanks

3. Does your facility have any atmospheric storage tanks that are exempt from PSM coverage under § 1910.119(a)(1)(ii)(B)? If so, what facts led you to conclude that the exemption applies, and do you treat the exempted tanks as if they were PSM-covered for safety or other reasons? Please explain.

4. Please provide any data or information on workplace accidents, near misses, or other safety-related incidents related to flammable liquids stored in atmospheric tanks exempted from PSM coverage under § 1910.119(a)(1)(ii)(B).

5. Would limiting the § 1910.119(a)(1)(ii)(B) exemption to apply only to flammable liquids stored in terminals and tank farms prevent worker injuries and fatalities? What would be the economic impacts of limiting the exemption in this way (e.g., costs and benefits of extending PSM coverage to additional types of tanks)? Are there any special circumstances involving small entities that OSHA should consider with respect to this option?

6. Should OSHA limit the § 1910.119(a)(1)(ii)(B) exemption to apply only to specific NAICS codes? If so, which NAICS codes should OSHA exempt?

7. Should the § 1910.119(a)(1)(ii)(B) exemption apply only to ''storage tanks,'' such that ''process tanks'' are explicitly covered under PSM? If so, how should OSHA define the terms ''storage tanks'' and ''process tanks''? What would be the economic impacts of limiting the exemption in this way? Are there any special circumstances involving small entities that OSHA should consider with respect to this option?

8. Are there any other options related to the § 1910.119(a)(1)(ii)(B) exemption of flammable liquids stored in atmospheric tanks that OSHA should consider to prevent worker injuries and fatalities? If so, what would be the economic impacts of the option(s), and are there any special circumstances involving small entities that OSHA should consider with respect to the option(s)?

C. Oil- and Gas-Well Drilling and Servicing

9. Does your facility conduct oil- and gas-well drilling or servicing operations not covered under § 1910.119? If so, do you treat these activities as covered by the PSM standard for safety or other reasons? Are the activities covered under other federal or state regulations? Please explain.

10. Please provide any data or information on workplace accidents, near misses, or other safety-related incidents involving oil-and gas-well drilling or servicing operations.

11. Would removing the § 1910.119(a)(2)(ii) exemption for oil- and gas-well drilling and servicing operations prevent worker injuries and fatalities? What would be the economic impact of removing the exemption? Are there any special circumstances involving small entities that OSHA should consider with respect to this option?

D. Oil- and Gas-Production Facilities

12. Does your facility conduct oil- and gas-production operations for which OSHA is not currently enforcing PSM requirements? If so, do you follow PSM requirements for these operations for safety or other reasons? Are the activities covered under other federal or state regulations? Please explain.

13. Please provide any data or information on workplace accidents, near misses, or other safety-related incidents involving oil- and gas-production facilities.

14. What would be the economic impact of resuming enforcement of the PSM standard for oil- and gas-production facilities? Are there any special circumstances involving small entities that OSHA should consider with respect to this option?

E. Expanding PSM Coverage and Requirements for Reactivity Hazards

15. What are the best criteria to use in classifying reactive hazards? What do you consider to be a reactive chemical? What do you consider to be a reactive mixture?

16. Do you consider some reactive hazards to be outside coverage of the existing PSM standard? If so, please describe these hazards.

17. Should OSHA add reactive chemicals to the list of PSM-covered chemicals in Appendix A of § 1910.119? If so, which reactive chemicals?

18. If your facility is in New Jersey and covered by the New Jersey TCPA, has the TCPA been effective in protecting New Jersey workers from reactive hazards? Please describe any economic impacts associated with TCPA coverage (e.g., costs and benefits, cost savings, shifts in usage of reactive chemicals, special circumstances involving small entities, etc.).

19. Should OSHA revise the PSM standard to use chemical functional groups similar to those in the TCPA [21] to define hazardous reactive mixtures? If so, which chemical functional groups should OSHA use?

20. Does your facility follow NFPA 400 for reactive hazards? If so, please describe the economic impacts associated with following NFPA 400 (e.g., cost of additional equipment, cost of additional training, benefits of quality management, special circumstances involving small entities, etc.). Is following NFPA 400 an effective way of protecting workers from reactive hazards? Please explain.

21. Has your facility implemented a reactive-hazards management program other than a program specified by the TCPA and NFPA 400? If so, please describe your facility's program, whether it protects worker more or less than the TCPA and NFPA 400, any

[21] The definition of ''reactive hazard substance (RHS) mixture'' in the TCPA references a list of chemical functional groups specified in N.J.A.C. 7:31–6.3(a), Table I, Part D, Group II. Whether any of the chemical functional groups are present determines, in part, coverage of an RHS mixture under the TCPA.

economic impacts associated with the program, and any special circumstances involving small entities.

22. What specific regulatory approach, if any, should OSHA use to comprehensively address reactive hazards, what would be the economic impacts of this approach, and would there be any special circumstances involving small entities? Are there specific requirements that OSHA should add to the PSM standard to ensure that employers adequately manage reactive hazards?

23. Please provide any data or information on workplace accidents, near misses, or other safety-related incidents involving reactive hazards not covered under the existing PSM standard. Would reactive-hazards management requirements in PSM have prevented the incidents?

F. Updating the List of Highly Hazardous Chemicals in Appendix A of the PSM Standard

24. What chemicals, if any, should OSHA add to the list of highly hazardous chemicals in Appendix A of § 1910.119 to prevent worker injuries and fatalities? Please provide any sources, data, or incident examples related to the hazards associated with the chemicals. What would be the economic impacts of adding the chemicals to Appendix A? Are there any special circumstances involving small entities that OSHA should consider with respect to adding the chemicals to Appendix A?

25. How often should OSHA update the list of highly hazardous chemicals in Appendix A of § 1910.119?

26. Is there a method, other than periodically updating the list of highly hazardous chemicals in Appendix A of § 1910.119 through rulemaking, that OSHA should use to prevent worker injuries and fatalities? Please explain.

G. Revising the PSM Standard To Require Additional Management-System Elements

27. Does your facility follow any management-system elements not required under § 1910.119 for PSM-covered operations? If so, please describe the additional management-system elements, the safety benefits, any economic impacts associated with following the elements, and any special circumstances involving small entities.

28. Would expanding the scope of the PSM standard to require additional management-system elements, or expanding the scope of existing PSM management-system elements, prevent worker injuries and fatalities? If so, please describe the elements, the safety benefits, any economic impacts associated with expanding the scope of the PSM standard in this way, and any special circumstances involving small entities that OSHA should consider.

29. In systems using management and metrics, how do facilities develop useful leading indicators? Should the PSM standard require facilities to share these indicators with employees or OSHA?

30. Would expansion of the PSM standard's employee participation provision to include requirements such as the SEMS stop-work authority, or other efforts to involve employees in all management-system elements, prevent worker injuries and fatalities?

31. Are there any other management-system elements in the existing PSM standard that OSHA should expand with additional requirements (e.g., a new requirement that employers perform a root-cause analysis for incidents under § 1910.119(m))? If so, please describe the additional requirements, the safety benefits, any economic impacts associated with expanding the PSM elements in this way, and any special circumstances involving small entities that OSHA should consider.

32. Please provide any data or information on workplace accidents, near misses, or other safety-related incidents that the employer could have prevented by following management-system elements not required under the existing PSM standard.

H. Amending Paragraph (d) of the PSM Standard To Require Evaluation of Updates to Applicable RAGAGEP

33. From what sources (e.g., codes, standards, published technical reports, consensus standards) does your facility select applicable RAGAGEP for operations covered under the PSM standard?

34. Does your facility evaluate updates to its selected RAGAGEP? If so, how does your facility monitor any updates, and how often do you evaluate them?

35. Please provide any data or information on workplace accidents, near misses, or other safety-related incidents involving failure to evaluate updates to applicable RAGAGEP for PSM-covered operations.

36. What would be an appropriate time period in which to conduct this evaluation? Would such a requirement be more appropriate in another paragraph of the PSM standard? For example, should such a requirement become part of the Process Hazard Analysis revalidation requirements at 29 CFR 1910.119(e)(5)?

37. Would requiring employers to evaluate updates to applicable RAGAGEP prevent worker injuries and fatalities? Is there another approach that can be used to ensure the incorporation of RAGAGEP into facility operations that is tangible and documentable? What would be the economic impacts of this requirement? Are there any special circumstances involving small entities that OSHA should consider with respect to this option?

I. Clarifying the PSM Standard by Adding a Definition for RAGAGEP

38. What does your facility use as a definition for RAGAGEP?

39. Would adding a definition for RAGAGEP to the PSM standard improve understanding of PSM requirements and prevent worker injuries and fatalities? If so, what specific definition for RAGAGEP should OSHA add to the PSM standard? What would be the economic impacts of adding such a definition? Are there any special circumstances involving small entities that OSHA should consider with respect to this option?

40. What criteria does your facility use to develop appropriate internal standards? For instance, if there is an applicable consensus standard, what steps do you take to ensure that your internal standards are at least as protective as the applicable standard?

J. Expanding the Scope of Paragraph (j) To Cover the Mechanical Integrity of Any Safety-Critical Equipment

41. Does your facility have any equipment not covered under § 1910.119(j) that is critical to process safety? If so, what type(s) of equipment? Did you identify the equipment as safety-critical through a PSM process hazard analysis? How did your facility determine that the equipment was safety-critical, and does your facility treat the equipment as if it were PSM covered for safety or other reasons? Please explain.

42. Please provide any data or information on workplace accidents, near misses, or other safety-related incidents related to the mechanical integrity of safety-critical equipment not covered under § 1910.119(j).

43. Would expanding the scope of § 1910.119(j) to cover the mechanical integrity of all equipment the employer identifies as critical to process safety, in addition to the equipment listed in existing § 1910.119(j), prevent worker injuries and fatalities? What would be the economic impact of expanding the scope of § 1910.119(j) in this way? Are there any special circumstances involving small entities that OSHA

should consider with respect to this option?

K. Clarifying Paragraph (l) of the PSM Standard With an Explicit Requirement That Employers Manage Organizational Changes

44. What do you consider to be an organizational change within the context of process safety management practices? For example, would you consider the following, or similar, changes to be organizational changes: reducing the number of operators in a shift; changing from 5-day to 7-day operations; changing from 8-hour to 12-hour operator shifts; replacing a unit manager; relocating a technical group to a remote corporate location; or changing a supervisory or compensation structure?

45. If your facility has established and implemented written procedures for management of organizational changes, please describe any economic impacts associated with the procedures.

46. Would clarifying § 1910.119(l) with an explicit requirement that employers manage organizational changes prevent worker injuries and fatalities? What would be the economic impact of such a clarification? Are there any special circumstances involving small entities that OSHA should consider with respect to this option?

47. Please describe any organizational changes made in your facility or organization that have had the potential to affect process operations. Were management-of-change procedures followed before making the changes?

48. What do you consider to be the best safety practices concerning management of organizational change?

49. Please provide any data or information on workplace accidents, near misses, or other safety-related incidents involving the failure to manage organizational change. Would following management-of-change procedures under § 1910.119(l) prevent these incidents?

L. Revising Paragraph (n) of the PSM Standard To Require Coordination of Emergency Planning With Local Emergency-Response Authorities

50. Does your facility provide information to, or coordinate emergency planning with, local emergency-response authorities? If so, please explain any special circumstances that necessitated the information sharing or coordination of emergency planning.

51. If OSHA proposes a regulatory amendment to require coordination, what types of information should OSHA require PSM-covered facilities to provide to local emergency-response authorities? For example, should OSHA require employers to provide safety data sheets for all on-site chemicals, list the quantities of chemicals, list the location of chemicals, provide block-flow diagrams, list fire-mitigation systems present, or report known fire and explosion risks in the facility? What would be the economic impact of requiring employers to provide such information? Are there any special circumstances involving small entities that OSHA should consider with respect to this option? What would be the cost to emergency-response authorities of coordinating emergency planning with PSM-covered employers?

52. What, if any, steps should OSHA require PSM-covered facilities to take in coordinating emergency planning with local emergency-response authorities? What additional benefits would accrue from requiring training exercises in addition to information sharing? What would be the economic impact of such requirements, and would there be any special circumstances involving small entities or security concerns that OSHA should consider?

53. Please provide any data or information on workplace accidents, near misses, or other safety-related incidents related to local emergency response authorities responding to a PSM-covered facility without adequate information on the chemicals present.

M. Revising Paragraph (o) of the PSM Standard To Require Third-Party Compliance Audits

54. Does your facility use a third party for conducting compliance audits under § 1910.119(o) for safety or other reasons? Please explain.

55. Please provide any data or information on workplace accidents, near misses, or other safety-related incidents that could have been prevented or minimized by more effective compliance audits conducted for operations covered under § 1910.119(o). Were the ineffective compliance audits conducted by in-house staff or a third party?

56. Would revising § 1910.119(o) to require employers to use a third party for compliance audits prevent worker injuries and fatalities? What would be the economic impacts of revising § 1910.119(o) in this way (e.g., typical consultant fees, additional work hours required, special circumstances involving small entities, etc.)?

57. Should OSHA revise § 1910.119(o) to require employers to use compliance auditors (internal or third party) with certain minimum credentials or certifications? If so, what minimum credentials or certifications should the Agency require? What burden might this place on small businesses?

58. Should OSHA revise § 1910.119(o)(1) to require a compliance audit frequency less than every three years?

59. Would revising § 1910.119(o) to require employers to respond to deficiencies found in the compliance audit within certain timeframes prevent worker injuries and fatalities? What would you consider to be an appropriate timeframe?

N. Expanding the Requirements of § 1910.109 To Cover Dismantling and Disposal of Explosives, Blasting Agents, and Pyrotechnics

60. Does your facility conduct explosives dismantling or disposal activities not covered under § 1910.109? If so, do you treat these activities as covered under § 1910.109 for safety or other reasons? Please explain.

61. Please provide any data or information on workplace accidents, near misses, or other safety-related incidents involving dismantling or disposal of explosives, blasting agents, and pyrotechnics. Would coverage of these dismantling and disposal activities under § 1910.109 prevent such incidents from occurring?

62. Are your operations currently covered under regulations issued by ATF? Are there specific areas of workplace safety that are not covered by ATF that should be considered by OSHA? Is there overlap or inconsistencies between the Requirements of § 1910.109 and ATF regulations that would need to be addressed before an expansion would be recommended?

63. What would be the economic impacts if OSHA expanded the scope of § 1910.109 to cover the dismantling and disposal of explosives, blasting agents, and pyrotechnics? Are there any special circumstances involving small entities that OSHA should consider with respect to this option?

O. Updating §§ 1910.106 and 1910.107 Based on the Latest Applicable Consensus Standards

64. Is your facility covered by §§ 1910.106 or 1910.107? If so, what are the operations covered by the standard(s)?

65. Are there other federal, state, or local requirements that cover flammable liquids or spray finishing operations in your facility? If so, do the requirements protect workers more or less than §§ 1910.106 and 1910.107? Please explain.

66. Does your facility follow NFPA 30, 30A, or 30B for flammable liquids,

or NFPA 33 for spray-finishing operations? If so, which edition(s)? Are there any other consensus standards applicable to flammable liquids or spray-finishing operations that your facility follows?

67. On which standards (e.g., consensus, federal, state, local) were the design and operation of your facility primarily based?

68. Should OSHA replace §§ 1910.106 and 1910.107 with the latest editions of NFPA 30, 30A, 30B, and 33? If so, should OSHA replace §§ 1910.106 and 1910.107 entirely or only in part? What would be the economic impacts of these options (e.g., cost of additional equipment, cost of additional training, benefits of quality management, special circumstances involving small entities, etc.)?

69. Are there gaps in safety coverage in §§ 1910.106 or 1910.107? If so, what are the gaps, would NFPA 30, 30A, 30B, and 33 address the gaps, and what would be the economic impacts of addressing the gaps through rulemaking? Are there any special circumstances involving small entities that OSHA should consider with respect to addressing the gaps through rulemaking?

70. Are there any requirements in §§ 1910.106 and 1910.107 that prevent worker injuries and fatalities better than the safety practices in the latest editions of NFPA 30, 30A, 30B, and 33? If so, which requirements?

71. Please provide any data or information on workplace accidents, near misses, or other safety-related incidents involving gaps in safety coverage in §§ 1910.106 or 1910.107.

72. Are the § 1910.106 provisions related to facility types (e.g., bulk plant, chemical plant, distillery) a useful classification system? If not, what type of a classification system should the standard use instead? Please explain.

73. If OSHA updates § 1910.106 and 1910.107 through rulemaking, what revisions to the scope and application of the standards would provide the best protection to workers?

P. Updating the Regulations Addressing the Storage, Handling, and Management of Ammonium Nitrate

74. Does your facility store, handle, or manage ammonium nitrate? If so, in what form (e.g., solid, liquid) and in what grade (e.g., high density, low density) is the ammonium nitrate? Please explain.

75. Does your facility comply with § 1910.109(i) for the storage of ammonium nitrate? Are there any other standards, including consensus standards, applicable to ammonium nitrate storage, handling, and management that your facility follows? If so, which ones?

76. Please provide any data or information on workplace accidents, near misses, or other safety-related incidents involving the storage, handling, and management of ammonium nitrate.

77. How can OSHA update its standards and improve its enforcement policy relating to the storage, handling, and management of ammonium nitrate to prevent worker injuries and fatalities? Please discuss the economic impacts associated with such improvement, including any special circumstances involving small entities that OSHA should consider.

Q. Changing Enforcement Policy for the PSM Exemption for Retail Facilities

78. Does your facility qualify for the PSM exemption for ''retail facilities'' under OSHA's current enforcement policy? If so, would changing OSHA's enforcement policy to only exempt facilities in NAICS sectors 44 and 45 that sell highly hazardous chemicals in small containers, packages, or allotments to the general public result in PSM coverage for your facility?

79. Please provide any data or information on workplace accidents, near misses, or other safety-related incidents involving highly hazardous chemicals at ''retail facilities'' exempt from PSM coverage under § 1910.119(a)(2)(i).

80. Please discuss any economic impacts that would result from changing OSHA's retail-facilities policy to only exempt facilities in NAICS sectors 44 and 45 that sell highly hazardous chemicals in small containers, packages, or allotments to the general public. Are there any special circumstances involving small entities that OSHA should consider with respect to this option?

81. Is there a definition of ''retail facilities'' that OSHA should use to protect workers under the PSM standard? Please discuss any economic impacts associated with your suggested definition. Are there any special circumstances involving small entities that OSHA should consider with respect to your or other definitions?

R. Changing Enforcement Policy for Highly Hazardous Chemicals Listed in Appendix A of the PSM Standard Without Specific Concentrations

82. Does your facility handle any chemicals excluded from PSM coverage on the basis that the concentration is below the ''maximum commercial grade''? If so, what are these chemicals and concentrations, and would OSHA adopting EPA's policy for RMP-listed chemicals in mixtures as OSHA's enforcement policy for PSM-listed chemicals without specific concentrations result in PSM coverage of the chemicals in your facility?

83. Please provide any data or information on workplace accidents, near misses, or other safety-related incidents involving highly hazardous chemicals excluded from PSM coverage on the basis that that the concentration was below the ''maximum commercial grade.''

84. Please discuss any economic impacts that would result from OSHA adopting EPA's policy for RMP-listed chemicals in mixtures as OSHA's enforcement policy for PSM-listed chemicals without specific concentrations. Are there any special circumstances involving small entities that OSHA should consider with respect to this option?

85. Is there a different enforcement policy that OSHA should use to protect workers from the hazards associated with the chemicals listed in Appendix A of the PSM standard without specific concentrations? Please discuss any economic impacts associated with your suggested enforcement policy. Are there any special circumstances involving small entities that OSHA should consider with respect to your suggested enforcement policy?

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice pursuant to 29 U.S.C. 653, 655, and 657, Secretary's Order 1–2012 (77 FR 3912; Jan. 25, 2012), and 29 CFR part 1911.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–29197 Filed 12–6–13; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2013–0498; FRL–9903–76–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Approval of the Redesignation Requests of the West Virginia Portion of the Steubenville-Weirton, OH-WV Nonattainment Area for the 1997 and 2006 Fine Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State of West Virginia's requests to redesignate to attainment the West Virginia portion of the Steubenville-Weirton, OH-WV nonattainment area (hereafter ''the Steubenville-Weirton Area'' or ''the Area'') for both the 1997 annual and the 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS or standards). EPA is also proposing to approve as a revision to the West Virginia State Implementation Plan (SIP), the associated maintenance plans to show maintenance of the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS through 2025 for the West Virginia portion of the Area. West Virginia's maintenance plans include insignificance findings for the mobile source contribution of $PM_{2.5}$ and nitrogen oxides (NO_X) emissions to the West Virginia portion of the Area for both the 1997 annual and 2006 24-hour $PM_{2.5}$ standards. EPA agrees with these insignificance findings, and is proposing approval of such findings for transportation conformity purposes. In addition, EPA is proposing to approve the 2008 emissions inventory for the West Virginia portion of the Area for the 2006 24-hour $PM_{2.5}$ NAAQS. In this rulemaking action, EPA also addresses the effects of two decisions of the United States Court of Appeals for the District of Columbia (D.C. Circuit or Court): The Court's August 21, 2012 decision to vacate and remand to EPA the Cross-State Air Pollution Control Rule (CSAPR); and the Court's January 4, 2013 decision to remand to EPA two final rules implementing the 1997 annual $PM_{2.5}$ standard. EPA has taken separate rulemaking action to approve the redesignation of the Ohio portion of the Steubenville-Weirton Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. These actions are being taken under the Clean Air Act. (CAA).

DATES: Written comments must be received on or before January 8, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0498 by one of the following methods:

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

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

C. *Mail:* EPA–R03–OAR–2013–0498, Cristina Fernández, Associate Director, Office of Air Quality Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2013–0498. 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 West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

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

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I. Background

The first air quality standards for $PM_{2.5}$ were established on July 16, 1997 (62 FR 38652, July 18, 1997). EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on a three-year average of annual mean $PM_{2.5}$ concentrations (the 1997 annual $PM_{2.5}$ standard). In the same rulemaking action, EPA promulgated a 24-hour standard of 65 $\mu g/m^3$, based on a three-year average of the 98th percentile of 24-hour concentrations.

On January 5, 2005 (70 FR 944, 1014), EPA published air quality area designations for the 1997 $PM_{2.5}$ standards. In that rulemaking action, EPA designated the Steubenville-Weirton Area as nonattainment for the 1997 annual $PM_{2.5}$ standard. The Steubenville-Weirton Area is comprised of Brooke County and Hancock County in West Virginia (the West Virginia

portion of the Area), and the Jefferson County in Ohio. *See* 40 CFR 81.336 (Ohio) and 40 CFR 81.349 (West Virginia).

On October 17, 2006 (71 FR 61144), EPA retained the annual average standard at 15 μg/m³, but revised the 24-hour standard to 35 μg/m³, based again on the three-year average of the 98th percentile of 24-hour concentrations (the 2006 annual $PM_{2.5}$ standard). On November 13, 2009 (74 FR 58688), EPA published designations for the 2006 24-hour $PM_{2.5}$ NAAQS, which became effective on December 14, 2009. In that rulemaking action, EPA designated the Steubenville-Weirton Area as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS. *See* 77 FR 58775 and also *see* 40 CFR 81.336 (Ohio) and 40 CFR 81.349 (West Virginia).

In response to legal challenges of the 2006 annual $PM_{2.5}$ standard, the D.C. Circuit remanded this standard to EPA for further consideration. *See American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual $PM_{2.5}$ standards are essentially identical, attainment of the 1997 annual $PM_{2.5}$ standard would also indicate attainment of the remanded 2006 annual $PM_{2.5}$ standard. Since the Steubenville-Weirton Area is designated nonattainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ standards, today's proposed rulemaking action addresses the redesignation to attainment of the West Virginia portion of the Steubenville-Weirton Area for these standards.

On September 14, 2011 (76 FR 56641) and May 14, 2012 (77 FR 28264), EPA made determinations that the entire Steubenville-Weirton Area had attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, respectively. Pursuant to 40 CFR 51.1004(c) and based on these determinations, the requirements for the Steubenville-Weirton Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning SIPs related to the attainment of either the 1997 annual or 2006 24-hour $PM_{2.5}$ NAAQS are suspended until such time as: The Area is redesignated to attainment for each standard, at which time the requirements no longer apply; or EPA determines that the Area has again violated any of the standards, at which time such plans are required to be submitted.

On April 13, 2012 and June 8, 2012, the West Virginia Department of Environmental Protection (WVDEP) formally submitted two separate requests to redesignate the West Virginia portion of the Steubenville-Weirton Area from nonattainment to attainment for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS, respectively. Each submittal included a maintenance plan as a SIP revision to ensure continued attainment of the standards throughout the West Virginia portion of the Area over the next 10 years. The June 8, 2012 submittal also includes a 2008 comprehensive emissions inventory for $PM_{2.5}$, SO_2 and NO_X for the 2006 24-hour $PM_{2.5}$ NAAQS, which WVDEP supplemented on June 24, 2013 to include emissions of VOC and ammonia.

In this proposed action, EPA is taking into account two recent decisions of the D.C. Circuit. In the first of the two Court decisions, the D.C. Circuit, on August 21, 2012, issued *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), which vacated and remanded CSAPR and ordered EPA to continue administering the Clean Air Interstate Rule (CAIR) ''pending . . . development of a valid replacement.'' *EME Homer City* at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. In the second decision, on January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* the D.C. Circuit remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008). 706 F.3d 428 (D.C. Cir. 2013).

II. EPA's Requirements

A. Criteria for Redesignation to Attainment

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) EPA determines that the area has attained the applicable NAAQS; (2) EPA has fully approved the applicable implementation plan for the area under section 110(k); (3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA has provided guidance on redesignation in the ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act Amendments of 1990,'' (57 FR 13498, April 16, 1992) (the ''General Preamble'') and has provided further guidance on processing redesignation requests in the following documents: (1) ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter the ''1992 Calcagni Memorandum''); (2) ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and (3) ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

B. Requirements of a Maintenance Plan

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future $PM_{2.5}$ violations.

The 1992 Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a $PM_{2.5}$ maintenance plan should address the following provisions: (1) An attainment emissions inventory; (2) a maintenance demonstration showing maintenance for 10 years; (3) a commitment to maintain the existing monitoring network; (4) Verification of continued attainment; and (5) a contingency plan to prevent or correct future violations of the NAAQS.

III. Summary of Proposed Actions

EPA is proposing to take several rulemaking actions related to the

redesignation of the West Virginia portion of the Steubenville-Weirton Area to attainment for both the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. EPA is proposing to find that the West Virginia portion of the Area meets the requirements for redesignation of the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve West Virginia's requests to change the legal designation of the West Virginia portion of the Area from nonattainment to attainment for both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. This rulemaking action does not impact the legal designation of the Ohio portion of the Steubenville-Weirton Area. EPA has taken separate rulemaking action to redesignate to attainment the Ohio portion of the Area for both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. (September 18, 2013, 78 FR 57273)

EPA is also proposing to approve the associated maintenance plans for the West Virginia portion of the Area as revisions to the West Virginia SIP for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, including the insignificance determinations for $PM_{2.5}$ and NO_X for the onroad mobile source contribution of the West Virginia portion of the Area for both the 1997 annual and the 2006 24-hour $PM_{2.5}$ standards. The approval of the maintenance plans is one of the CAA criteria for redesignation of the West Virginia portion of the Area to attainment for both standards. West Virginia's maintenance plans are designed to ensure continued attainment in the West Virginia portion of the Area of the 1997 annual and 2006 24-hour $PM_{2.5}$ standards, respectively, for 10 years after redesignation.

EPA previously determined that the Steubenville-Weirton Area has attained both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, and EPA is proposing to find that the Area continues to attain both standards. Furthermore, under section 172(c)(3) of the CAA, EPA is proposing to approve the 2008 comprehensive emissions inventory for the West Virginia portion of the Area as part of West Virginia's SIP for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA's analysis of the proposed actions is provided in section V. of today's proposed rulemaking action.

IV. Effects of Recent Court Decisions on Proposed Actions

A. Effect of the August 21, 2012 D.C. Circuit Decision Regarding EPA's CSAPR

1. Background

EPA recently promulgated CSAPR (76 FR 48208, August 8, 2011), to replace CAIR, which has been in place since 2005. *See* 76 FR 59517. CAIR requires significant reductions in emissions of SO_2 and NO_X from electric generating units to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. *See* 76 FR 70093. The D.C. Circuit initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008).

On December 30, 2011, the D.C. Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the Court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer City Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The Court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR ''pending the promulgation of a valid replacement.'' *EME Homer City,* 696 F.3d at 38 *(D.C. Circ. 2012).* The D.C. Circuit denied all petitions for rehearing on January 24, 2013. EPA and other parties have filed petitions for certiorari to the U.S. Supreme Court. On June 24, 2013 the Supreme Court granted EPA's petition for certiorari. Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion.

2. Proposal on This Issue

In light of these unique circumstances and for the reasons explained subsequently, to the extent that attainment is due to emission reductions associated with CAIR, EPA is hereby proposing to determine that those reductions are sufficiently permanent and enforceable for purposes of CAA sections 107(d)(3)(E)(iii) and 175A. EPA, therefore, proposes to approve the redesignation requests and the related SIP revision for Brooke and Hancock Counties in West Virginia, including West Virginia's plan for maintaining attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ standards in the West Virginia portion of the Steubenville-Weirton Area.

As directed by the D.C. Circuit, CAIR remains in place and enforceable until substituted by a valid replacement rule. West Virginia's SIP revision lists CAIR as a control measure that was approved by EPA on August 6, 2009 (74 FR 38536) and became state-effective on May 1, 2008 for the purpose of reducing SO_2 and NO_X emissions. CAIR was thus in place and getting emission reductions when the Steubenville-Weirton Area monitored attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. The quality-assured, quality-controlled, certified monitoring data used to demonstrate the Area's attainment of both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS was also impacted by CAIR.

To the extent that West Virginia is relying on CAIR in its maintenance plan, the recent directive from the D.C. Circuit in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the Court to develop a new rule to address interstate transport to replace CSAPR, and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Thus, CAIR will remain in place until: (1) EPA has promulgated a final rule through a notice-and-comment rulemaking process; (2) states have had an opportunity to draft and submit SIPs; (3) EPA has reviewed the SIPs to determine if they can be approved; and (4) EPA has taken action on the SIPs, including promulgating a Federal Implementation Plan (FIP) if appropriate. The Court's clear instruction to EPA that it must continue to administer CAIR until a valid replacement exists provides an additional backstop: By definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to have SIPs that eliminate significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Further, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR ''might be more severe now in light of the reliance interests accumulated over the intervening four years.'' *EME Homer City,* 696 F.3d at 38. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with

CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIP revisions as appropriate to identify whether there are any issues that need to be addressed.

B. Effect of the January 4, 2013 D.C. Circuit Decision Regarding $PM_{2.5}$ Implementation Under Subpart 4 of Part D of Title I of the CAA

1. Background

As discussed previously, on January 4, 2013, in *Natural Resources Defense Council (NRDC)* v. *EPA,* the D.C. Circuit remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008) (collectively, ''1997 $PM_{2.5}$ Implementation Rule''). 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 annual $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1 of part D of Title I of the CAA (subpart 1), rather than the particulate-matter-specific provisions of subpart 4 of Part D of Title I (subpart 4). Although the Court did not directly address the 2006 24-hour $PM_{2.5}$ standard, EPA is taking into account the Court's position on subpart 4 and the 1997 annual $PM_{2.5}$ standard in evaluating redesignations for the 2006 24-hour $PM_{2.5}$ standard.

2. Proposal on This Issue

EPA is proposing to determine that the Court's January 4, 2013 decision does not prevent EPA from redesignating the West Virginia portion of the Steubenville-Weirton Area to attainment for either the 1997 annual or the 2006 24-hour $PM_{2.5}$ NAAQS. Even in light of the Court's decision, redesignation for this Area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA first explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA then shows that, even if EPA applies the subpart 4 requirements to the West Virginia redesignation requests and disregards the provisions of its 1997 $PM_{2.5}$ Implementation Rule recently remanded by the Court, the State's request for redesignation of the Area still qualifies for approval. EPA's discussion takes into account the effect of the Court's ruling on the Area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

a. Applicable Requirements for Purposes of Evaluating the Redesignation Requests

With respect to the 1997 $PM_{2.5}$ Implementation Rule, the Court's January 4, 2013 ruling rejected EPA's reasons for implementing the $PM_{2.5}$ NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 annual $PM_{2.5}$ NAAQS under subpart 4, in addition to subpart 1. For the purposes of evaluating the West Virginia's redesignation request for the West Virginia portion of the Area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not ''applicable'' for the purposes of CAA section 107(d)(3)(E), and thus EPA is not required to consider subpart 4 requirements with respect to the redesignation of the West Virginia portion of the Steubenville-Weirton Area. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are ''applicable'' and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. *See* 1992 Calcagni Memorandum. *See also* ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465–66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424–27, May 12, 2003); *Sierra Club* v. *EPA,* 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of ''applicable'' under the statute is ''whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment'').[1] In this case, at the time that West Virginia submitted its redesignation requests for both standards, the requirements under subpart 4 were not due, and indeed, were not yet known to apply.

EPA's view that, for purposes of evaluating the redesignation of the West Virginia portion of the Steubenville-Weirton Area, the subpart 4 requirements were not due at the time West Virginia submitted the redesignation requests is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit's decision in *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). In *South Coast,* the Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that ''applicable requirements,'' for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. *See, e.g.,* Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA, therefore, did not consider subpart 2 requirements to be ''applicable'' for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E).

EPA's interpretation derives from the provisions of section 107(d)(3). Section

[1] Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet ''all requirements 'applicable' to the area under section 110 and part D.'' Section 107(d)(3)(E)(ii) provides that the EPA must have fully approved the ''applicable'' SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of ''applicable'' as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If ''applicable requirements'' were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the CAA for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of this redesignation, the timing and nature of the Court's January 4, 2013 decision in *NRDC* v. *EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. West Virginia submitted its two redesignation requests for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS on April 12, 2012 and June 12, 2012, respectively, but the Court did not issue its decision remanding EPA's 1997 $PM_{2.5}$ Implementation Rule concerning the applicability of the provisions of subpart 4 until January 2013.

To require West Virginia's fully-completed and pending redesignation requests for both the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS to comply now with requirements of subpart 4 that the Court announced only in its January, 2013 decision on the 1997 $PM_{2.5}$ Implementation Rule, would be to give retroactive effect to such requirements when the State had no notice that it was required to meet them. The D.C. Circuit recognized the inequity of this type of retroactive impact in *Sierra Club* v. *Whitman,* 285 F.3d 63 (D.C. Cir. 2002),[2] where it upheld the District Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The Court rejected this view, stating that applying it ''would likely impose large costs on States, which would face fines and suits for not implementing air pollution prevention plans * * * even though they were not on notice at the time.'' *Id.* at 68. Similarly, it would be unreasonable to penalize the State of West Virginia by rejecting its redesignation request for an area that is already attaining both the 1997 annual and 2006 24-hour $PM_{2.5}$ standards and that met all applicable requirements known to be in effect at the time of the requests. For EPA now to reject the redesignation requests solely because the State did not expressly address subpart 4 requirements of which it had no notice, would inflict the same unfairness condemned by the Court in *Sierra Club* v. *Whitman.*

[2] *Sierra Club* v. *Whitman* was discussed and distinguished in a recent D.C. Circuit decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n* v. *EPA.* 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

b. Subpart 4 Requirements and West Virginia Redesignation Requests

Even if EPA were to take the view that the Court's January 4, 2013 decision requires that, in the context of pending redesignations for either the 1997 annual or 2006 24-hour $PM_{2.5}$ standards, subpart 4 requirements were due and in effect at the time West Virginia submitted its redesignation requests, EPA proposes to determine that the West Virginia portion of the Steubenville-Weirton Area still qualifies for redesignation to attainment for both the 1997 annual and 2006 24-hour $PM_{2.5}$ standards. As explained subsequently, EPA believes that the two redesignation requests for the West Virginia portion of the Steubenville-Weirton Area, though not expressed in terms of subpart 4 requirements, substantively meet the requirements of that subpart for purposes of redesignating the West Virginia portion of the Area to attainment for both standards.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the West Virginia portion of the Steubenville-Weirton Area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for coarse particulate matter (PM_{10})[3] nonattainment areas, and under the Court's January 4, 2013 decision in *NRDC* v. *EPA,* these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See,* the General Preamble. In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent ''subsumed by, or integrally related to, the more specific PM_{10} requirements'' (57 FR 13538, April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

For the purposes of these redesignation requests, in order to identify any additional requirements which would apply under subpart 4, EPA is considering the Steubenville-

[3] PM_{10} refers to particulates nominally 10 micrometers in diameter or smaller.

Weirton Area to be a ''moderate'' $PM_{2.5}$ nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as ''moderate'' nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a ''serious'' nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM_{10}, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.[4] In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a prevention of significant deterioration (PSD) program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,[5] when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the $PM_{2.5}$ standards is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that, ''The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.''

The General Preamble also explained that, ''[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.'' *Id.* EPA similarly stated in its 1992 Calcagni Memorandum that, ''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.''

It is evident that even if we were to consider the Court's January 4, 2013 decision in *NRDC* v. *EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively[6] and thus are now past due, those requirements do not apply to an area that is attaining the 1997 annual and/or the 2006 24-hour $PM_{2.5}$ NAAQS, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret ''applicable requirements'' in the redesignation context. *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the 1997 annual and/or the 2006 24-hour $PM_{2.5}$ standard. EPA's prior ''Clean Data Policy'' rulemakings for the PM_{10} NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* ''Determination of Attainment for Coso Junction Nonattainment Area,'' (75 FR 27944, May 19, 2010). *See also* Coso Junction Proposed PM_{10} Redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006 and 71 FR 63641, 63643–47, October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

Elsewhere in this notice, EPA proposes to determine that the Steubenville-Weirton Area has attained both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Under its longstanding interpretation, EPA is proposing to determine here that the West Virginia portion of the Area meets the attainment-related plan requirements of subparts 1 and 4 for both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)(1) and section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating these redesignation requests.

c. Subpart 4 and Control of $PM_{2.5}$ Precursors

The D.C. Circuit in *NRDC* v. *EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA in this section addresses the Court's opinion with respect to $PM_{2.5}$ precursors. While past implementation of subpart 4 for PM_{10} has allowed for control of PM_{10} precursors such as NO_X from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, section 189(e) of the CAA specifically provides that control requirements for major stationary sources of direct PM_{10} shall

[4] The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating these redesignation requests is discussed in this rulemaking action.

[5] I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

[6] As EPA has explained previously, we do not believe that the Court's January 4, 2013 decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club* v. *Whitman, supra.*

also apply to PM_{10} precursors from those sources, except where EPA determines that major stationary sources of such precursors ''do not contribute significantly to PM_{10} levels which exceed the standard in the area.''

EPA's 1997 $PM_{2.5}$ Implementation Rule, remanded by the D.C. Circuit, contained rebuttable presumptions concerning certain $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was ''not required to address VOC [and ammonia] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures.'' EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing $PM_{2.5}$ concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The Court in its January 4, 2013 decision made reference to both section 189(e) and 40 CFR 51.1002, and stated that, ''In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not $PM_{2.5}$ precursors, as subpart 4 expressly governs precursor presumptions.'' *NRDC* v. *EPA,* at 27, n.10.

Elsewhere in the Court's opinion, however, the Court observed ''Ammonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and PM_{10}. For a PM_{10} nonattainment area governed by subpart 4, a precursor is presumptively regulated. *See* 42 U.S.C. 7513a(e) [section 189(e)].'' *Id.* at 21, n.7.

For a number of reasons, EPA believes that its proposed redesignations of the West Virginia portion of the Steubenville-Weirton Area for the 1997 annual and the 2006 $PM_{2.5}$ NAAQS are consistent with the Court's decision on this aspect of subpart 4. While, the Court, citing section 189(e), stated that ''for a PM_{10} area governed by subpart 4, a precursor is 'presumptively regulated,'' the Court expressly declined to decide the specific challenge to EPA's 1997 $PM_{2.5}$ Implementation Rule provisions regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular $PM_{2.5}$ nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the 1997 $PM_{2.5}$ Implementation Rule's rebuttable presumptions regarding ammonia and VOC as $PM_{2.5}$ precursors (and any similar provisions reflected in the guidance for the 2006 24-hour $PM_{2.5}$ NAAQS), the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the Area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of West Virginia portion of the Steubenville-Weirton Area, EPA believes that doing so is consistent with proposing redesignation of the West Virginia portion of the Area for the 1997 annual and the 2006 24-hour $PM_{2.5}$ standard. The West Virginia portion of the Area has attained both the 1997 annual and 2006 24-hour $PM_{2.5}$ standards without any specific additional controls of VOC and ammonia emissions from any sources in the Area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM_{10} precursors.[7] Under subpart 1 and EPA's prior implementation rule, all major stationary sources of $PM_{2.5}$ precursors were subject to regulation, with the exception of ammonia and VOC. Thus, EPA must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the West Virginia portion of the Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. As explained subsequently, EPA does not believe that any additional controls of ammonia and VOC are required in the context of these redesignations.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOC under other CAA requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). *See* 57 FR 13542. EPA in this action proposes to determine that West Virginia's SIP has met the provisions of section 189(e) with respect to ammonia and VOC as precursors. This proposed supplemental determination is based on our findings that: (1) The Steubenville-Weirton Area contains no major stationary sources of ammonia; and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.[8] In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignations of the West Virginia portion of the Steubenville-Weirton Area, which is attaining the 1997 annual and 2006 24-hour $PM_{2.5}$ standards, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 annual or the 2006 24-hour $PM_{2.5}$ standard in the Area. *See* 57 FR 13539–42.

EPA notes that its 1997 $PM_{2.5}$ Implementation Rule provisions in 40 CFR 51.1002 were not directed at evaluation of $PM_{2.5}$ precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 annual or the 2006 24-hour $PM_{2.5}$ NAAQS. By contrast, redesignation to attainment primarily requires the nonattainment area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the Court's January 4, 2013 decision as calling for ''presumptive regulation'' of ammonia and VOC for $PM_{2.5}$ under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring West Virginia to address precursors differently than it has already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart

[7] Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

[8] The Steubenville-Weirton Area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology (RACT) regulations and various onroad and nonroad motor vehicle control programs.

4 requirements with respect to precursors in attainment plans for PM_{10} contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment and control purposes.[9] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}.[10] EPA believes that application of this approach to $PM_{2.5}$ precursors under subpart 4 is reasonable. Because the Steubenville-Weirton Area has already attained both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS with its current approach to regulation of $PM_{2.5}$ precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of West Virginia's requests for redesignation of the Steubenville-Weirton Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. In the context of a redesignation, the Area has shown that it has attained the standards. Moreover, the State has shown and EPA is proposing to determine that attainment of both 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in this Area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment of the standards. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013 decision of the Court as precluding redesignation of the West Virginia portion of the Steubenville-Weirton Area to attainment for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS at this time.

In sum, even if West Virginia was required to address precursors for the Steubenville-Weirton Area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded 1997 $PM_{2.5}$ Implementation Rule, EPA would still conclude that the West Virginia portion of the Area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3(E)(ii) and (v).

V. EPA's Analysis of West Virginia's Submittals

EPA is proposing several rulemaking actions for the West Virginia portion of the Steubenville-Weirton Area (1) To redesignate the West Virginia portion of the Area to attainment for both the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS; and (2) approve into the West Virginia SIP the associated maintenance plans for both the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. EPA is also proposing in this rulemaking action to approve the 2008 comprehensive emissions inventory to satisfy section 172(c)(3) requirement for the 2006 24-hour $PM_{2.5}$ NAAQS, one of the criteria for redesignation. EPA's proposed approvals of the redesignation requests and maintenance plans for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are based upon EPA's determination that the Area continues to attain both standards, which EPA is proposing in this rulemaking action, and that all other redesignation criteria have been met for the West Virginia portion of the Area. The following is a description of how the West Virginia's April 13, 2012, June 8, 2012 and June 24, 2013 submittals satisfy the requirements of section 107(d)(3)(E) of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ standards.

A. Redesignation Requests

1. Attainment

As noted previously, in a final rulemaking action dated September 14, 2011 (76 FR 56641), EPA determined that the entire Steubenville-Weirton Area attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date, based upon complete, quality-assured, and certified ambient air quality monitoring data for the period of 2007–2009. In that same rulemaking action, EPA also determined that the Steubenville-Weirton Area continued to attain the 1997 annual $PM_{2.5}$ standard, based on complete, quality-assured and certified ambient air quality monitoring data for 2008–2010. In a separate rulemaking action dated May 4, 2012 (77 FR 28264), EPA also determined that the Steubenville-Weirton Area has attained the 2006 24-hour $PM_{2.5}$ standard, based on complete, quality-assured and certified ambient air quality monitoring data for 2008–2010. The basis and effect of these determinations of attainment for both the 1997 and 2006 $PM_{2.5}$ NAAQS were discussed in the notices of the proposed (76 FR 28393 and 76 FR 61291, respectively) and final (76 FR 56641 and 77 FR 28264, respectively) rulemakings.

EPA has reviewed the ambient air quality $PM_{2.5}$ monitoring data in the Steubenville-Weirton Area, consistent with the requirements contained at 40 CFR part 50, and recorded in EPA's Air Quality System (AQS). To support the previous determinations of attainment of the Area, EPA has reviewed the most recent data in AQS, including quality-assured, quality-controlled, and state-certified data for 2009–2011 and preliminary state-certified data for 2010–2012. The air quality data show that the Steubenville-Weirton Area continues to attain both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. The Area's $PM_{2.5}$ annual and 24-hour design values[11] from 2007–2012 are provided in Tables 1 and 2, respectively.

TABLE 1—STEUBENVILLE-WEIRTON AREA'S ANNUAL DESIGN VALUES FOR THE 1997 ANNUAL $PM_{2.5}$ STANDARD FOR THE 2007–2009, 2008–2010, 2009–2011, AND 2010–2012 MONITORING PERIODS, IN $\mu g/m^3$

County	Monitor ID	Annual design values			
		2007–2009	2008–2010	2009–2011	Preliminary 2010–2012
Jefferson, OH	39–081–0017	14.2	13.0	12.5	12.2
Jefferson, OH	39–081–1001	13.6	12.7	11.8	11.4
Brooke, WV	54–009–0005	14.4	13.7	13.0	12.7

[9] *See, e.g.,* ''Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM_{10} Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM_{10} Standards,'' (69 FR 30006, May 26, 2004) (approving a PM_{10} attainment plan that impose controls on direct PM_{10} and NO_X emissions and did not impose controls on SO_2, VOC, or ammonia emissions).

[10] *See, e.g., Assoc. of Irritated Residents* v. *EPA et al.,* 423 F.3d 989 (9th Cir. 2005).

[11] As defined in 40 CFR part 50, Appendix N, section (1)(c).

TABLE 1—STEUBENVILLE-WEIRTON AREA'S ANNUAL DESIGN VALUES FOR THE 1997 ANNUAL $PM_{2.5}$ STANDARD FOR THE 2007–2009, 2008–2010, 2009–2011, AND 2010–2012 MONITORING PERIODS, IN μg/m³—Continued

County	Monitor ID	Annual design values			
		2007–2009	2008–2010	2009–2011	Preliminary 2010–2012
Brooke, WV	54–009–0011	14.0	13.1	11.6	11.1
Hancock, WV	54–029–1004	13.4	12.4	11.7	11.3
Area's Annual Design Value		14.4	13.7	13.0	12.7

Source: EPA AQS Preliminary Design Value Reports (AMP480) dated December 6, 2012, and June 26, 2013.
Note: Monitoring site 54–009–0011 ceased operations temporarily from May to July 2011, due to significance maintenance on the site.

TABLE 2—STEUBENVILLE-WEIRTON AREA'S 24-HOUR DESIGN VALUES FOR THE 2006 24-HOUR $PM_{2.5}$ STANDARD FOR THE 2008–2010, 2009–2011, AND 2010–2012 MONITORING PERIODS, IN μg/m³

County	Monitor ID	24-Hour design values		
		2008–2010	2009–2011	Preliminary 2010–2012
Jefferson, OH	39–081–0017	30	28	27
Jefferson, OH	39–081–1001	28	24	24
Brooke, WV	54–009–0005	31	27	27
Brooke, WV	54–009–0011	31	29	27
Hancock, WV	54–029–1004	31	28	27
Area's 24-hour Design Value		31	29	27

Source: EPA AQS Preliminary Design Value Reports (AMP480) dated December 6, 2012, and June 26, 2013.
Note: Monitoring site 54–009–0011 ceased operations temporarily from May to July 2011, due to significance maintenance on the site.

EPA's review of the monitoring data for 2009–2011 and 2010–2012 supports EPA's previous determinations that the Area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, and that the Area continues to attain both standards. In addition, as discussed subsequently with respect to the maintenance plan, WVDEP has committed to continue monitoring ambient $PM_{2.5}$ concentrations in accordance with 40 CFR part 58. Thus, EPA is proposing to determine that the Steubenville-Weirton Area continues to attain the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

2. The Area Has Met All Applicable Requirements Under Section 110 and Subpart 1 of the CAA and Has a Fully Approved SIP Under Section 110(k)

In accordance with section 107(d)(3)(E)(v), the SIP revisions for the 1997 annual and 2006 24-hour $PM_{2.5}$ standards for the West Virginia portion of the Steubenville-Weirton Area must be fully approved under section 110(k) and all the requirements applicable to the Area under section 110 of the CAA (general SIP requirements) and part D of Title I of the CAA (SIP requirements for nonattainment areas) must be met.

a. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to the following:

- Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of Part C requirements (PSD);
- Provisions for the implementation of Part D requirements for NSR permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision for various NAAQS, EPA has required certain states to establish programs to address transport of air pollutants in accordance with the NO_X SIP Call (63 FR 57356, October 27, 1998), amendments to the NO_X SIP Call (64 FR 26298, May 14, 1999 and 65 FR 11222, March 2, 2000), and CAIR (70 FR 25162, May 12, 2005). However, section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110(a)(2) elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Steubenville-Weirton Area will still be subject to these requirements after it is redesignated. EPA concludes that the section 110(a)(2) and part D requirements which are linked with a particular area's designation and classification are the

relevant measures to evaluate in reviewing a redesignation request, and that section 110(a)(2) elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. This approach is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See* also, the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR at 37890, June 19, 2000), and in the Pittsburgh-Beaver Valley, Pennsylvania redesignation (66 FR at 53099, October 19, 2001).

EPA has reviewed the West Virginia SIP and has concluded that it meets the general SIP requirements under section 110(a)(2) of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of West Virginia's SIP addressing section 110(a)(2) requirements, including provisions addressing $PM_{2.5}$. *See* (76 FR 47062, August 4, 2011). These requirements are, however, statewide requirements that are not linked to the $PM_{2.5}$ nonattainment status of the Steubenville-Weirton Area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of the State's $PM_{2.5}$ redesignation requests.

b. Subpart 4 Requirements

Subpart 1 sets forth the basic nonattainment plan requirements applicable to $PM_{2.5}$ nonattainment areas. Under section 172, states with nonattainment areas must submit plans providing for timely attainment and must meet a variety of other requirements.

The General Preamble for Implementation of Title I discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining the standard. *See* (57 FR 13498, April 16, 1992).

On June 24, 2009, WVDEP submitted an attainment plan for the West Virginia portion of the Steubenville-Weirton Area for the 1997 annual $PM_{2.5}$ NAAQS, which included a 2002 comprehensive emissions inventory. As mentioned previously, on September 14, 2011 (76 FR 56641), EPA made a determination that the Steubenville-Weirton Area had attained the 1997 annual $PM_{2.5}$ NAAQS. This determination of attainment was based upon complete, quality-assured and certified ambient air quality monitoring data for the period of 2007–2009 showing that the entire Area had attained the standard by its applicable attainment date of April 5, 2010, and 2008–2010 data showing that the Area continued to attain the standard. In a separate rulemaking action dated May 14, 2012 (77 FR 28264), EPA made a determination of attainment for the Steubenville-Weirton Area for the 2006 24-hour $PM_{2.5}$ NAAQS, based on quality-assured and certified ambient air quality monitoring data for the period of 2008–2010.

Pursuant to 40 CFR 51.2004(c), upon these determinations by EPA that the Area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, the requirement for West Virginia to submit for the Steubenville-Weirton Area an attainment demonstration and associated RACM, a RFP plan, contingency measures, and other planning SIPs related to the attainment of the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS are suspended until the Area is redesignated to attainment for each standard or EPA determines that the Area has again violated any of the standards, at which time such plans are required to be submitted. Thus, because attainment has been reached for the Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and the Area continues to attain both standards, no additional measures are needed to provide for attainment. Therefore, the requirements of section 172(c)(1), 172(c)(2), 172(c)(6), and 172(c)(9) are no longer considered to be applicable for purposes of redesignation of the Area for both standards.

Section 172(c)(4) of the CAA requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Asssistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Nevertheless, West Virginia currently has an approved NSR program, codified in the State's regulation at 45 CSR 19. *See* (71 FR 64468, November 2, 2006) (approving nonattainment NSR program into the SIP) and (77 FR 63736, October 17, 2012) (approving revisions to West Virginia's PSD program). However, the State's PSD program for $PM_{2.5}$ will become effective in the Steubenville-Weirton Area upon redesignation to attainment.

Section 172(c)(7) of the CAA requires the SIP to meet the applicable provisions of section 110(a)(2). As noted previously, we believe the West Virginia SIP meets the requirements of section 110(a)(2) that are applicable for purposes of redesignation.

As a result of EPA's determinations of attainment of the Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, respectively, the only remaining requirement under section 172 to be considered for each of the $PM_{2.5}$ standards is the comprehensive emissions inventory required under section 172(c)(3). Section 172(c)(3) of the CAA requires submission of a comprehensive, accurate, and current inventory of actual emissions. For purposes of the $PM_{2.5}$ NAAQS, this emissions inventory should address not only direct emissions of $PM_{2.5}$, but also emissions of all precursors with the potential to participate in $PM_{2.5}$ formation, i.e., SO_2, NO_X, VOC and ammonia.

The June 24, 2009 submittal is relevant to this proposed action to redesignate the West Virginia portion of the Area only with respect to the comprehensive emissions inventory requirement of section 172(c)(3) for the 1997 annual $PM_{2.5}$ standard. On April 16, 2013 (78 FR 22423), EPA approved the 2002 comprehensive emissions inventory included in the attainment plan for the 1997 annual $PM_{2.5}$ NAAQS, to meet the requirement of section 172(c)(3) for this standard. The 2002 comprehensive emissions inventory for the 1997 annual $PM_{2.5}$ standard includes emissions estimates that cover the general source categories of point sources, area sources, onroad mobile sources, and nonroad mobile sources. The pollutants that comprise the 2002 emissions inventory are $PM_{2.5}$, NO_X, SO_2, VOC, and ammonia. An evaluation of West Virginia's 2002 comprehensive emissions inventory for the West Virginia portion of the Area is provided in the Technical Support Document (TSD) prepared by EPA for the

rulemaking action. *See* Docket ID No. EPA–R03–OAR–2012–0369.

To satisfy the 172(c)(3) requirement for the 2006 24-hour $PM_{2.5}$ standard, in the June 8, 2012 submittal West Virginia requested approval of the 2005 and 2008 comprehensive emissions inventories submitted with its maintenance plan. On June 24, 2013, WVDEP supplemented its June 8, 2012 submittal with 2008 emissions inventories for ammonia and VOC. The entire 2008 emissions inventory is the most current accurate and comprehensive emissions inventory of direct $PM_{2.5}$, NO_X, SO_2, VOC, and ammonia for the Area. Thus, as part of this rulemaking action, EPA is proposing to approve West Virginia's 2008 comprehensive emissions inventory for the 2006 24-hour $PM_{2.5}$ NAAQS as satisfying the requirement of section 172(c)(3) of the CAA for this standard. Final approval of the 2008 base year emissions inventory will satisfy the emissions inventory requirement under section 172(c)(3) of the CAA for the 2006 24-hour $PM_{2.5}$ NAAQS.

The entire 2008 comprehensive emissions inventory addresses the general source categories of point sources, area sources, onroad mobile sources, and nonroad mobile sources. A summary of the 2008 comprehensive emissions inventory is provided in Table 3. EPA has reviewed the documentation provided by WVDEP and found the 2008 emissions inventory to be approvable. For more information on EPA's analysis of the 2008 emissions inventory, see EPA's TSDs dated August 29, 2013, available in the docket for this rulemaking action at *www.regulations.gov. See* Docket ID No. EPA–R03–OAR–2013–0498.

TABLE 3—SUMMARY OF 2008 COMPREHENSIVE EMISSIONS INVENTORY FOR THE ENTIRE STEUBENVILLE-WEIRTON AREA, IN TONS PER YEAR (TPY)

Sector	Direct $PM_{2.5}$	NO_X	SO_2	VOC *	Ammonia *
Point	2,092	38,843	137,669	1,308	94
Area	593	1,480	582	1,655	231
Nonroad	40	496	7	739	0.49
Onroad	89	2,530	10	1,924	114
Total	2,814	43,349	138,268	5,626	439

* VOC and ammonia emissions were supplemented by WVDEP from EPA's 2008 NEI v.1.5.

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' In conjunction with its request to redesignate the West Virginia portion of the Area to attainment status, West Virginia submitted SIP revisions to provide for maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in the West Virginia portion of the Area for at least 10 years after redesignation, throughout 2025. West Virginia is requesting that EPA approve this SIP revision as meeting the requirement of CAA section 175A. Once approved, the maintenance plans for the West Virginia portion of the Area will ensure that the SIP for West Virginia meets the requirements of the CAA regarding maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for the West Virginia portion of the Area. EPA's analysis of the maintenance plans is provided in section V.B. of this document.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability which EPA promulgated pursuant to its authority under the CAA. EPA interprets the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under CAA section 107(d) because state conformity rules are still required after redesignation, and Federal conformity rules apply where state rules have not been approved. *See Wall* v. *EPA,* 265 F. 3d 426 (6th Cir. 2001) (upholding this interpretation) and (60 FR 62748, December 7, 1995) (discussing Tampa, Florida).

Thus, for purposes of redesignating to attainment the Steubenville-Weirton Area for the 1997 annual $PM_{2.5}$ NAAQS, EPA determines that West Virginia has met all the applicable SIP requirements under part D of Title I of the CAA. EPA also determines that upon final approval of the 2008 comprehensive emissions inventory as proposed in this rulemaking action, West Virginia will also meet all the applicable SIP requirements under part D of Title I of the CAA for purposes of redesignating the Area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS.

c. The West Virginia Portion of the Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

For purposes of redesignation to attainment for the 1997 annual $PM_{2.5}$ NAAQS, EPA has fully approved all applicable requirements of West Virginia's SIP for the Area in accordance with section 110(k) of the CAA. Upon final approval of the 2008 comprehensive emissions inventory as proposed in this rulemaking action, EPA will have fully approved all applicable requirements of West Virginia's SIP for the Area for purposes of redesignation to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS in accordance with section 110(k) of the CAA.

3. Permanent and Enforceable Reductions in Emissions

For redesignating a nonattainment area to attainment, section 107(d)(3)(E)(iii) requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions. In making this demonstration, West Virginia has calculated the change in emissions between 2005, a year showing nonattainment for both the 1997 and 2006 $PM_{2.5}$ standards in the Steubenville-Weirton Area, and 2008, one of the years for which the

Steubenville-Weirton Area monitored attainment for both standards. A summary of the emissions reductions for $PM_{2.5}$, NO_X, and SO_2 from 2005 to 2008 submitted by WVDEP for the Steubenville-Weirton Area is provided in Table 4. For more information on EPA's analysis of the 2005 and 2008 emissions inventory, see EPA's TSDs dated August 24, 2012 and August 29, 2013, available in the docket for this rulemaking action at *www.regulations.gov.*

TABLE 4—EMISSION REDUCTIONS OF DIRECT $PM_{2.5}$ FROM 2005 TO 2008 IN THE ENTIRE STEUBENVILLE-WEIRTON AREA, IN TONS PER YEAR (TPY)

	Sector	2005	2008	Net change 2005–2008
Direct $PM_{2.5}$	Point—EGU	1,308	1,373	65
	Point—Non-EGU	799	719	−80
	Area	632	563	−69
	Locomotive/Marine	51	30	−21
	Nonroad	45	40	−5
	Onroad	111	89	−22
	Total	2,946	2,814	−132
NO_X	Point—EGU	41,047	35,487	−5,560
	Point—Non-EGU	3,866	3,356	−510
	Area	2,010	531	−1,479
	Locomotive/Marine	1,458	949	−509
	Nonroad	575	496	−79
	Onroad	3,129	2,530	−599
	Total	52,083	43,349	−8,736
SO_2	Point—EGU	225,595	135,507	−90,088
	Point—Non-EGU	2,951	2,162	−789
	Area	1,007	523	−484
	Locomotive/Marine	79	59	−20
	Nonroad	39	7	−32
	Onroad	32	10	−22
	Total	229,703	138,268	−91,436

The reduction in emissions and the corresponding improvement in air quality from 2005 to 2008 in the Steubenville-Weirton Area can be attributed to a number of regulatory control measures that have been implemented in the Area and contributing areas in recent years.

a. Federal Measures Implemented

Reductions in $PM_{2.5}$ precursors emissions have occurred statewide and in upwind states as a result of Federal emission control measures, with additional emission reductions expected to occur in the future.

The Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards (Tier 2 Standards) have resulted in lower NO_X and SO_2 emissions from new cars and light duty trucks, including sport-utility vehicles. These Federal rules were phased in between 2004 and 2009. EPA has estimated that, after phasing in the new requirements, new vehicles emit less NO_X in the following percentages: Passenger cars (light duty vehicles)—77 percent (%); light duty trucks, minivans, and sports utility vehicles—86%; and, larger sports utility vehicles, vans, and heavier trucks—69–95%. EPA expects fleet wide average emissions to decline by similar percentages as new vehicles replace older vehicles. The Tier 2 Standards also reduced the sulfur content of gasoline to 30 parts per million (ppm) beginning in January 2006, up to a 90 percent reduction.

EPA issued the Heavy-Duty Diesel Engine Rule in July 2000. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which reduced fine particulate emissions from heavy-duty highway engines and further reduced the highway diesel fuel sulfur content to 15 parts per million (ppm). The total program is estimated to achieve a 90% reduction in direct $PM_{2.5}$ emissions and a 95% reduction in NO_X emissions for these new engines using low sulfur diesel, compared to existing engines using higher sulfur diesel fuel. The reduction in fuel sulfur content also yielded an immediate reduction in particulate sulfate emissions from all diesel vehicles.

In May 2004, EPA promulgated the Nonroad Diesel Rule for large nonroad diesel engines, such as those used in construction, agriculture, and mining, to be phased in between 2008 and 2014. This rule reduces the sulfur content in nonroad diesel fuel by over 99%. Prior to 2006, nonroad diesel fuel averaged approximately 3,400 ppm sulfur. This rule limited nonroad diesel sulfur content to 500 ppm by 2006, with a further reduction to 15 ppm by 2010.

b. State and Local Measures

The Area's air quality is affected by regulation of SO_2 and NO_X from power plants (i.e., stationary sources containing electric generating units (EGUs)). There are two affected EGU sources in Jefferson County (the Ohio portion of the Area): W.H. Sammis Power Plant and Cardinal Power Plant.

EPA issued the NO_X SIP Call in 1998 to require 22 states and the District of Columbia to reduce NO_X emissions from large EGUs and large non-EGUs such as industrial boilers, internal combustion engines, and cement kilns. *See* (63 FR 57356, October 27, 1998). EPA approved West Virginia's Phase I NO_X SIP Call rule on May 10, 2002 (67 FR 31733) and its Phase II rule on September 28, 2006 (71 FR 56881). West Virginia's NO_X SIP Call rules established West Virginia's

NO_X Budget Trading Program and set forth requirements for its non-trading sources, respectively. The former enabled West Virginia to participate in the EPA-administered regional NO_X Budget Trading Program under the NO_X SIP Call. The emission reductions resulting from regulations developed in response to the NO_X SIP Call are permanent and enforceable.

On March 10, 2005, EPA issued CAIR, which applies to 27 eastern states and the District of Columbia. CAIR relied on 3 separate cap-and-trade programs to reduce SO_2 and NO_X emissions. On August 4, 2009 (74 FR 38536), EPA approved West Virginia's CAIR rules into the West Virginia SIP. West Virginia's NO_X SIP Call requirements were subsumed by the State's CAIR ozone season NO_X trading program. On August 8, 2011, EPA promulgated CSAPR (76 FR 48208), to replace CAIR, which has been in place since 2005. The D.C. Circuit initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR ''pending the promulgation of a valid replacement.'' *EME Homer City,* 696 F.3d at 38.

As noted earlier, EPA believes it is appropriate to allow states to rely on the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable pending a valid replacement rule, for purposes such as a redesignation. CAIR was in place and thus getting emission reductions when the Steubenville-Weirton Area monitored attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. The monitoring data used to demonstrate the Area's attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS was impacted by CAIR. EPA finds West Virginia appropriately included CAIR as a control measure in this SIP revision.

Also, a Federal consent decree with the Ohio Edison Company (OHECo) required significant emissions reductions of NO_X and SO_2 from seven EGUs at the Sammis Power Station in Jefferson County, Ohio. The Federal consent decree established in the Sammis Power Station a plant-wide annual emissions limit (PAL) of NO_X that started on 2005 at 11,371 tons and continued on 2012 and every year thereafter at 11,863 tons, and a declining PAL of SO_2 that started on 2005 at 58,000 tons and leveled on 2011 and every year thereafter at 29,900 tons. From 2005 to 2011, the consent decree also established various control measures that consist of the installation and continuous operation of various pollution control units at each EGU when combusting fossil fuels, including: Selective catalytic reduction (SCR), selective non-catalytic reduction (SNCR), low NO_X burners, overfired air, and advanced combustion control optimization to reduce NO_X emissions; and induct scrubbers, flash dry absorbers, and flue gas desulfurization (FGD) systems for reducing SO_2 emissions. In 2003, the Sammis Power Station emitted 40,430 tons of NO_X and 164,400 tons of SO_2. As a result of the control measures established by the consent decree, the Sammis Power Station reduced NO_X emissions by 28,567 tpy by 2007 (42 percent reduction from 2003), and SO_2 emissions by 134,500 tpy by 2012 (82 percent reduction from 2003).

Additional controls have and will be installed on the Cardinal Power Plant, a coal-fired power plant also located in Jefferson County that consists of three EGUs, each with approximately a nominal net capacity of 600 megawatts (MW). As a result of the American Electric Plant (AEP) Federal consent decree, the Cardinal Power Plant was required to install and continuously operate SCR systems on each EGU to control NO_X emissions starting in January 2009, and FGD systems to reduce SO_2 emissions on Units 1 and 2 by December 2008 and Unit 3 by December 2012. The Federal consent decree also achieves direct particulate matter emissions reductions by establishing new emissions rates to each EGU to be achieved by December 2009, and by optimizing the operation of the existing electrostatic precipitators (ESPs). EPA believes that West Virginia has adequately demonstrated that the observed air quality improvement in the West Virginia portion of the Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures.

B. Maintenance Plans

On April 12, 2012 and June 8, 2012, WVDEP submitted maintenance plans for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, respectively, as required by section 175A of the CAA. EPA's analysis for proposing approval of the maintenance plans is provided in this section.

1. Attainment Emissions Inventory

An attainment inventory is comprised of the emissions during the time period associated with the monitoring data showing attainment. WVDEP determined that the appropriate attainment inventory year for the maintenance plans of both standards is 2008, one of the years in the periods during which the Steubenville-Weirton Area monitored attainment of the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS, respectively, as described previously. The 2008 inventory included in the maintenance plans contains primary $PM_{2.5}$ emissions (including condensables), SO_2, and NO_X. The same inventory and supporting documentation was provided in the maintenance plans for 2008.

WVDEP used data from the 2008 annual emissions inventory submitted to EPA's National Emissions Inventory (NEI) database and EPA's Clean Air Markets Division (CAMD) database to compile their inventory. For the 2008 area (non-point) source inventory, WVDEP used the 2008 NEI v1.5 data developed by EPA. Commercial marine vessels and locomotive emissions were taken from the 2008 NEI v1.5. The nonroad mobile sources emissions were generated using EPA's NONROAD model. The 2008 onroad mobile source inventory was developed using the most current version of EPA's highway mobile source emissions model at the time, MOVES2010a. The Ohio Department of Transportation (ODOT) and the Wood-Washington-Wirt Interstate Planning Commission performed the onroad mobile source analysis in coordination with the Ohio Environmental Protection Agency (Ohio EPA) and WVDEP, with additional data provided by Ohio EPA, West Virginia Department of Transportation (WVDOT) and WVDEP. The maintenance plans also included Ohio's 2008 emissions inventory for the Ohio portion of the Area. This inventory include estimates for EGU point, non-EGU point, nonroad, area, marine, aircraft, and rail, and onroad mobile sources for emissions of $PM_{2.5}$, NO_X, and SO_2.

EPA has reviewed the documentation provided by WVDEP and found the 2008 emissions inventory submitted with the maintenance plans to be approvable. For more information on EPA's analysis of the 2008 emissions inventory, see EPA's TSDs dated August 24, 2012 and August 29, 2013, available in the docket for this rulemaking action at *www.regulations.gov.*

2. Maintenance Demonstration

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' EPA has interpreted this as a showing of maintenance ''for a period of ten years following redesignation.'' Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. *See* 1992 Calcagni Memorandum, pages 9–10.

For a demonstration of maintenance, emissions inventories are required to be projected to future dates to assess the influence of future growth and controls; however, the demonstration need not be based on modeling. *See Wall* v. *EPA, supra; Sierra Club* v. *EPA, supra. See also* 66 FR 53099–53100 and 68 FR 25430–32. WVDEP uses projection inventories to show that the West Virginia portion of the Area will remain in attainment and developed projection inventories for an interim year of 2015 and a maintenance plan end year of 2025 to show that future emissions of NO_X, SO_2, and direct $PM_{2.5}$ will remain at or below the attainment year 2008 emissions levels throughout the West Virginia portion of the Area through the year 2025.

EPA has reviewed the documentation provided by WVDEP for developing annual 2015 and 2025 emissions inventories for the West Virginia portion of the Area. Emissions estimates for 2015 and 2025 for non-EGU point and area sources were grown from the 2008 inventory using Workforce West Virginia economic forecasts (WV Workforce). There are no EGUs located in the WV portion of the Area. Locomotive and marine emissions for 2015 and 2025 were also based on the 2008 inventory using Workforce WV economic forecasts. The WV Workforce projections were selected because they relied more on local data and provided more coverage of various categories and a wider range of years based on 2008 emissions data. Nonroad mobile source emissions estimates for 2015 and 2025 were developed using monthly NONROAD model runs and summarizations of monthly data to obtain annual data values. Onroad mobile emissions for 2015 and 2025 were calculated from the emissions factors produced by MOVES2010a, as performed by ODOT.

EPA has determined that the 2015 and 2025 projected emissions inventories provided by WVDEP are approvable. For more information on EPA's analysis of the emissions inventories, see EPA's TSDs dated August 24, 2012 and August 29, 2013, available in the docket for this rulemaking action at *www.regulations.gov.* The maintenance plans also included Ohio's emissions inventories for the Ohio portion of the Area for 2015 and 2025. These inventories include estimates for EGU point, non-EGU point, nonroad, area, marine, aircraft, and rail, and onroad mobile sources for emissions of $PM_{2.5}$, NO_X, and SO_2.

Tables 5, 6, and 7 provide a summary of the emissions inventories for the entire Steubenville-Weirton Area for the 2008 attainment year, the 2015 interim year, and the 2025 maintenance plan end year. The inventories show that, between 2008 and 2025, the Area is projected to reduce direct $PM_{2.5}$ emissions by 116 tpy, NO_X emissions by 25,816 tpy and SO_2 emissions by 90,823 tpy. Thus, the projected emissions inventories show that the West Virginia portion of the Steubenville-Weirton Area will continue to maintain the 1997 annual and 2006 24-hour $PM_{2.5}$ standards during the maintenance period. In addition, EPA has evaluated ammonia and VOC emissions of the Area for the maintenance demonstration, and such evaluation is addressed on section V.B.6. of this notice.

TABLE 5—COMPARISON OF 2008, 2015, AND 2025 EMISSIONS OF DIRECT $PM_{2.5}$ FOR THE ENTIRE STEUBENVILLE-WEIRTON AREA, IN TONS PER YEAR (TPY)

Sector	Direct $PM_{2.5}$				
	2008	2015	2025	Net change 2008–2015	Net change 2008–2025
Point—EGU	1,373	1,405	1,450	32	77
Point—Non-EGU	719	677	630	−42	−89
Area	563	556	552	−7	−11
Locomotive/Marine	30	27	23	−3	−7
Nonroad	40	29	18	−11	−22
Onroad	89	45	25	−44	−64
Total	2,814	2,741	2,698	−75	−116

TABLE 6—COMPARISON OF 2008, 2015, AND 2025 EMISSIONS OF NO_X FOR THE ENTIRE STEUBENVILLE-WEIRTON AREA, IN TONS PER YEAR (TPY)

Sector	NO_X				
	2008	2015	2025	Net change 2008–2015	Net change 2008–2025
Point—EGU	35,487	19,488	12,632	−15,999	−22,855
Point—Non-EGU	3,356	3,206	3,006	−150	−350
Area	531	527	523	−4	−8
Locomotive/Marine	949	854	729	−95	−220
Nonroad	496	294	207	−202	−289
Onroad	2,530	1,194	437	−1,336	−2,093
Total	43,349	25,563	17,533	−17,786	−25,815

TABLE 7—COMPARISON OF 2008, 2015, AND 2025 EMISSIONS OF SO_2 FOR THE ENTIRE STEUBENVILLE-WEIRTON AREA, IN TONS PER YEAR (TPY)

Sector	SO_2				
	2008	2015	2025	Net change 2008–2015	Net change 2008–2025
Point—EGU	135,507	72,203	45,073	−63,304	−90,434
Point—Non-EGU	2,162	2,049	1,867	−113	−295
Area	523	502	459	−21	−64
Locomotive/Marine	59	51	39	−8	−20
Nonroad	7	1	1	−6	−6
Onroad	10	7	6	−3	−4
Total	138,268	74,813	47,446	−63,455	−90,823

3. Monitoring Network

West Virginia's maintenance plans include a commitment to continue to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. There are five $PM_{2.5}$ monitors in the Steubenville-Weirton Area: Two monitors in Brooke County and one in Hancock County, West Virginia, and two monitors in Jefferson County, Ohio. WVDEP will consult with EPA prior to making any necessary changes to the $PM_{2.5}$ monitoring network and will continue to quality assure the monitoring data in accordance with the requirements of 40 CFR part 58.

4. Verification of Continued Attainment

To provide for tracking of the emission levels in the West Virginia portion of the Area, WVDEP requires major point sources to submit air emissions information annually and prepares a new periodic inventory for all $PM_{2.5}$ precursors every three years in accordance with EPA's Air Emissions Reporting Requirements (AERR). Emissions information will be compared to the attainment year inventory (2008) to assure continued attainment with the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and will be used to assess emissions trends, as necessary.

5. Contingency Measures

The contingency plan provisions are designed to promptly correct a violation of either the 1997 annual or the 2006 24-hour $PM_{2.5}$ NAAQS that occurs in the Area after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that West Virginia will promptly correct a violation of either the 1997 annual or the 2006 24-hour $PM_{2.5}$ NAAQS that occurs in the Area after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

West Virginia's maintenance plans outline the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur. West Virginia's contingency measures include a warning level response and an action level response. An initial warning level response is triggered for the 1997 annual $PM_{2.5}$ NAAQS when the $PM_{2.5}$ average of the weighted annual mean for a single calendar year exceeds 15.5 μg/m³ within the Steubenville-Weirton Area. An initial warning level response is triggered for the 2006 24-hour $PM_{2.5}$ NAAQS when the 98th percentile 24-hour $PM_{2.5}$ concentration for a single calendar year exceeds 35.5 μg/m³ within the Area. In the case of triggering a warning level, a study will be conducted to determine if the emissions trends show increasing concentrations of $PM_{2.5}$, and whether this trend, if any, is likely to continue. If it is determined through the study that action is necessary to reverse emissions increases, West Virginia will follow the same procedures for control selection and implementation as for an action level response, and implementation of necessary controls will take place as expeditiously as possible, but no later than 12 months from the end of the most recent calendar year.

For the 1997 annual $PM_{2.5}$ NAAQS, the action level response will be prompted by any one of the following: (1) A warning level response study showing emissions increases; (2) a two-year average of the weighted annual mean of 15.0 μg/m³ or greater occurs within the Area; or (3) a violation of the standard occurs in the Area (i.e. a three-year average of the weighted annual means of 15.0 μg/m³ or greater). For the 2006 24-hour $PM_{2.5}$ NAAQS, the action level response will be prompted by any one of the following: (1) A warning level response study showing emissions increases; (2) a two-year average of the 98th percentile of 35 μg/m³ or greater within the Area; or (3) a violation of the standard occurs in the Area (i.e. a three-year average of the 98th percentile of 35 μg/m³ or greater). If an action level response is triggered for any of the standards, West Virginia will adopt and implement appropriate control measures within 18 months from the end of the year in which monitored air quality triggering a response occurs. West Virginia will also consider whether additional regulations that are not a part of the maintenance plan can be implemented in a timely manner to respond to the trigger.

West Virginia commits to adopt and expeditiously implement the necessary corrective actions. West Virginia's potential contingency measures include the following: (1) Diesel reduction emission strategies; (2) alternative fuels and diesel retrofit programs for fleet vehicle operations; (3) $PM_{2.5}$, SO_2, and NO_X emissions offsets for new and modified major sources; (4) concrete manufacturing controls; and (5) additional NO_X reductions. Additionally, West Virginia has identified a list of sources that could potentially be controlled, including: Industrial, commercial and institutional (ICI) boilers for SO_2 and NO_X controls, EGUs, process heaters, internal combustion engines, combustion turbines, other sources greater than 100 tons per year, fleet vehicles, and aggregate processing plants.

6. EPA's Evaluation of VOC and Ammonia Precursors in West Virginia's Maintenance Plans

With regard to the redesignation of the West Virginia portion of the Steubenville Weirton Area in evaluating the effect of the Court's remand of EPA's

1997 $PM_{2.5}$ Implementation Rule, which included presumptions against consideration of VOC and ammonia as $PM_{2.5}$ precursors, EPA in this proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv). To begin with, EPA notes that the area has attained both the 1997 annual and 2006 24-hour $PM_{2.5}$ standard and that West Virginia has shown that attainment of these standards is due to permanent and enforceable emission reductions.

EPA proposes to determine that the West Virginia's maintenance plan shows continued maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ standards by tracking the levels of the precursors whose control brought about attainment of the standards in the Steubenville-Weirton Area. EPA, therefore, believes that the only additional consideration related to the maintenance plan requirements that results from the Court's January 4, 2013 decision is that of assessing the potential role of VOC and ammonia in demonstrating continued maintenance in this Area. As explained subsequently, based upon documentation provided by the State and supporting information, EPA believes that the maintenance plan for the West Virginia portion of the Area need not include any additional emission reductions of VOC or ammonia in order to provide for continued maintenance of the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS.

First, as noted previously in EPA's discussion of section 189(e), VOC emission levels in the Steubenville-Weirton Area have historically been well-controlled under SIP requirements related to ozone and other pollutants. Second, total ammonia emissions throughout the Steubenville-Weirton Area are low, especially when comparing in comparison to the total amounts of SO_2, NO_X, and even direct $PM_{2.5}$ emissions from sources in the Area.

West Virginia's maintenance plan shows that significant emissions of direct $PM_{2.5}$, NO_X, and SO_2 are projected to decrease by 116 tpy, 25,816 tpy, and 90, 823 tpy, respectively, over the maintenance period in the Area. *See* Tables 5–7. In addition, emissions inventories used in the regulatory impact analysis (RIA) for the 2012 $PM_{2.5}$ NAAQS [12] show that VOC emissions in the Area are projected to decrease by 1,405 tpy between 2007 and 2020. Ammonia emissions are projected to increase by 150 tpy between 2007 and 2020; however this increase is not significant when compared with the emissions reductions projected for the other precursors. *See* Table 8. Given that the Steubenville-Weirton Area is already attaining the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS even with the current level of emissions from sources in the Area, the downward trend of emissions inventories would be consistent with continued attainment. Indeed, projected emissions reductions for the precursors that West Virginia is addressing for purposes of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS indicate that the Area should continue to attain both standards following the precursor control strategy that the State has already elected to pursue. Even if VOC and ammonia emissions were to increase unexpectedly between 2007 and 2025, the overall emissions reductions projected between 2008 and 2025 of direct $PM_{2.5}$, NO_X and SO_2 would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the potential $PM_{2.5}$ precursors will not increase to the extent that they will cause monitored $PM_{2.5}$ levels to violate either the 1997 annual or 2006 24-hour $PM_{2.5}$ standard during the maintenance period.

TABLE 8—COMPARISON OF 2007 AND 2020 EMISSIONS OF VOC AND AMMONIA FOR THE ENTIRE STEUBENVILLE-WEIRTON AREA, IN TONS PER YEAR (TPY) [13]

Sector	VOC			Ammonia		
	2007	2020	Net change 2007–2020	2007	2020	Net change 2007–2020
Point	1,316	1,491	175	94	271	177
Area	1,441	1,443	2	239	241	2
Nonroad	829	380	-449	1	1	0
Onroad	1,673	540	-1,133	56	27	-29
Fires	18	18	0	1	1	0
Total	5,276	3,872	-1,405	391	542	150

In addition, available air quality modeling analyses show continued maintenance of the standard during the maintenance period. The current annual design value for the Area is 12.7 μg/m³ and the current 24-hour design value is 27 μg/m³, based on preliminary 2010–2012 air quality data, which are well below the levels of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. *See* Tables 1 and 2. Moreover, the modeling analysis conducted for the RIA for the 2012 $PM_{2.5}$ NAAQS indicates that the design values for the Steubenville-Weirton Area are expected to continue to decline through 2020. In the RIA analysis, the 2020 modeled annual design value for the Area is 9.3 μg/m³ and the 2020 24-hour design value is 23 μg/m³.[14] Given that most precursor emissions are projected to decrease through 2025, it is reasonable to conclude that monitored $PM_{2.5}$ levels in the Area will also continue to decrease through 2025.

Thus, EPA believes that there is ample justification to conclude that the West Virginia portion of the Steubenville-Weirton Area should be redesignated, even taking into consideration the emissions of other precursors potentially relevant to $PM_{2.5}$. After consideration of the D.C. Circuit's January 4, 2013 decision, and for the reasons set forth in this notice, EPA proposes to approve West Virginia's maintenance plans and requests to redesignate its portion of the Steubenville-Weirton Area to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ standards. This proposed approval is based on a showing that the West Virginia's maintenance plans provides for maintenance of both the

[12] "Review of the NAAQS for Particulate Matter—Regulatory Impact Analysis." Docket ID No. EPA–HQ–OAR–2010–0955.

[13] These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 $PM_{2.5}$ NAAQS.

[14] The 2020 projected $PM_{2.5}$ design values are part of the RIA for the 2012 $PM_{2.5}$ NAAQS.

1997 annual and 2006 24-hour $PM_{2.5}$ standards for at least ten years after redesignation, throughout 2025, in accordance with section 175A.

C. Transportation Conformity Insignificance Determinations

Transportation conformity is required under section 176(c) of the CAA to ensure that Federally supported highway, transit projects, and other activities are consistent with (conform to) the purpose of the SIP. The CAA requires Federal actions in nonattainment and maintenance areas to ''conform to'' the goals of SIP. This means that such actions will not cause or contribute to violations of a NAAQS; worsen the severity of an existing violation; or delay timely attainment of any NAAQS or any interim milestone. Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the Transportation Conformity Rule (40 CFR part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, EPA, FHWA, and FTA to demonstrate that their metropolitan transportation plans and transportation improvement plans (TIPs) conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (MVEBs) contained in a SIP.

For MVEBs to be approvable, they must meet, at a minimum, EPA's adequacy criteria found at 40 CFR 93.118(e)(4). However, in certain instances, the Transportation Conformity Rule allows areas to forgo establishment of a MVEB where it is demonstrated that the regional motor vehicle emissions for a particular pollutant or precursor are an insignificant contributor to the air quality problem in an area. The general criteria for insignificance determinations can be found in 40 CFR 93.109(f). Insignificance determinations are based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory; the current state of air quality as determined by monitoring data for the relevant NAAQS; the absence of SIP motor vehicle control measures; and the historical trends and future projections of the growth of motor vehicle emissions. EPA's rationale for providing for insignificance determinations is described in the July 1, 2004, revision to the Transportation Conformity Rule at 69 FR 40004. Specifically, the rationale is explained on page 40061 under the subsection XXIII.B. entitled, ''Areas With Insignificant Motor Vehicle Emissions.''

As part of the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS redesignation requests and maintenance plans, West Virginia is requesting that EPA finds that onroad emission of direct $PM_{2.5}$ and NO_X emissions for the Steubenville-Weirton Area are insignificant for transportation conformity purposes. On August 15, 2013, EPA initiated an adequacy review of the findings of insignificance for both the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS that West Virginia included in its redesignation submittals. As such, notices of the submission of these findings were posted on the adequacy Web site (*http://epa.gov/otaq/stateresources/transconf/currsips.htm*). The public comment period closed on September 16, 2013. There were no public comments. EPA is acting on making these adequacy findings final through a separate notice of adequacy. Consistent with EPA's adequacy review of West Virginia's redesignation requests and maintenance plans and EPA's thorough review of the entire SIP submissions, EPA is proposing to approve West Virginia's insignificance determinations for the onroad motor vehicle contribution of $PM_{2.5}$ and NO_X emissions to the overall $PM_{2.5}$ emissions for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS for the Steubenville-Weirton Area.

Because EPA finds that West Virginia's submittals meet the criteria in the Transportation Conformity Rule for insignificance findings for motor vehicle emissions of $PM_{2.5}$ and NO_X in the Steubenville-Weirton Area, it is not necessary to establish $PM_{2.5}$ and NO_X MVEBs for the Area. EPA finds that the submittals demonstrate that $PM_{2.5}$ and NO_X, regional motor vehicle emissions are insignificant contributors to the annual and daily $PM_{2.5}$ air quality in the Steubenville-Weirton Area. These findings are based on the following: (1) The State provided information that projects that onroad mobile source NO_X constitutes 5 percent or less of the Area's total NO_X emissions in 2015 and 2025 due to continuing fleet turnover; (2) the State provided information that projects that onroad mobile source $PM_{2.5}$ emissions constitute 3.59% of the Area's total $PM_{2.5}$ emissions and decreases significantly in later analysis years to 1.84% (2015) and 1.21% (2025); (3) there are no SIP requirements for motor vehicle control measures for the Steubenville-Weirton Area and it is unlikely that motor vehicle control measures will be implemented for $PM_{2.5}$ in the Area in the future; and (4) the Area has attained both the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. As a result, MVEBs for $PM_{2.5}$ and NO_X are not required for the Steubenville-Weirton Area to maintain the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. EPA is proposing to approve the findings of insignificant contribution by onroad sources for $PM_{2.5}$ and NO_X, resulting in no proposed MVEBs for the Steubenville-Weirton Area for the 2015 and 2025 projected maintenance years. Onroad emissions were calculated using the EPA required MOVES2010a model.

West Virginia did not provide emission budgets for SO_2, VOC, and ammonia because it concluded, consistent with the presumptions regarding these precursors in the Transportation Conformity Rule at 40 CFR 93.102(b)(2)(v), which predated and was not disturbed by the litigation on the 1997 $PM_{2.5}$ Implementation Rule, that emissions of these precursors from motor vehicles are not significant contributors to the Area's $PM_{2.5}$ air quality problem.

EPA issued conformity regulations to implement the 1997 annual $PM_{2.5}$ NAAQS in July 2004 and May 2005 (69 FR 40004, July 1, 2004 and 70 FR 24280, May 6, 2005, respectively). Those actions were not part of the final rule recently remanded to EPA by the Court of Appeals for the District of Columbia in *NRDC* v. *EPA,* No. 08–1250 (Jan. 4, 2013), in which the Court remanded to EPA the 1997 $PM_{2.5}$ Implementation Rule because it concluded that EPA must implement that NAAQS pursuant to the PM-specific implementation provisions of subpart 4, rather than solely under the general provisions of subpart 1. That decision does not affect EPA's proposed approval of the insignificance findings.

First, as noted above, EPA's conformity rule implementing the 1997 annual $PM_{2.5}$ NAAQS was a separate action from the overall $PM_{2.5}$ implementation rule addressed by the Court and was not considered or disturbed by the decision. Therefore, the conformity regulations were not at issue in *NRDC* v. *EPA.*[15] In addition, as

[15] The 2004 rulemaking action addressed most of the transportation conformity requirements that apply in $PM_{2.5}$ nonattainment and maintenance areas. The 2005 conformity rule included provisions addressing treatment of $PM_{2.5}$ precursors in MVEBs. *See* 40 CFR 93.102(b)(2). While none of these provisions were challenged in the NRDC case, EPA also notes that the Court declined to address challenges to EPA's presumptions regarding $PM_{2.5}$ precursors in the $PM_{2.5}$ implementation rule. *NRDC* v. *EPA,* at 27, n. 10.

discussed in section V.A.1 of this rulemaking action, the air quality data show that the Steubenville-Weirton Area continues to attain both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Further, the State's maintenance plan shows continued maintenance through 2025 by demonstrating that NO_X, SO_2, and direct $PM_{2.5}$ emissions continue to decrease through the maintenance period. With regard to SO_2, the 2005 final conformity rule (70 FR 24280) based its presumption concerning onroad SO_2 MVEBs on emissions inventories that show that SO_2 emissions from onroad sources constitute a ''de minimis'' portion of total SO_2 emissions. For the Steubenville-Weirton Area, onroad mobile source SO_2 constitutes less than one tenth of one percent (<0.1%) of the Area's total SO_2 emissions in the 2015 and 2025 horizon years. For more information on EPA's review of the determination of insignificance, see the TSD dated September 24, 2013, available in the docket for this rulemaking action at *www.regulations.gov*.

VI. Proposed Actions

EPA is proposing to approve the two redesignation requests of the West Virginia portion of the Steubenville-Weirton Area from nonattainment to attainment for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS, respectively. EPA has evaluated West Virginia's redesignation requests and determined that upon approval of the 2008 comprehensive emissions inventory for the 2006 24-hour $PM_{2.5}$ NAAQS proposed as part of this rulemaking action, it would meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for both standards. EPA believes that the monitoring data demonstrate that the Steubenville-Weirton Area is attaining and will continue to attain the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is also proposing to approve the associated maintenance plans for the West Virginia portion of the Area as a revision to the West Virginia SIP for the 1997 annual and 2006 24-hour $PM_{2.5}$ standards because it meets the requirements of CAA section 175A for both standards. For transportation conformity purposes, EPA is also proposing to approve for both the 1997 annual and 2006 24-hour $PM_{2.5}$ standards West Virginia's determinations that onroad emissions of $PM_{2.5}$ and NO_X are insignificant contributors to $PM_{2.5}$ concentrations in the Steubenville-Weirton Area. Final approval of the redesignation requests would change the official designations of the West Virginia portion of the Steubenville-Weirton Area for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS, respectively, found at 40 CFR part 81, from nonattainment to attainment, and would incorporate into the West Virginia SIP the associated maintenance plans ensuring continued attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in the West Virginia portion of the Area for the next 10 years, until 2025. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law and the CAA. 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 (Publ. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rulemaking, in which EPA is proposing approval of the redesignation requests and maintenance plans for the West Virginia portion of the Steubenville-Weirton Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and the 2008 comprehensive emissions inventory for the 2006 24-hour $PM_{2.5}$ NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: November 20, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013–28940 Filed 12–6–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2013–0393; FRL 9903–44–OEI]

Chlorsulfuron; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of Petition.

SUMMARY: EPA is denying a petition to remove chlorsulfuron from the list of chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 and section 6607 of the Pollution Prevention Act (PPA) of 1990. EPA has reviewed the available data on this chemical and has determined that chlorsulfuron does not meet the deletion criterion of EPCRA section 313(d)(3). Specifically, EPA is denying this petition because EPA's review of the petition and available information resulted in the conclusion that chlorsulfuron meets the listing criterion of EPCRA section 313(d)(2)(C) due to its toxicity to aquatic plants.

DATES: EPA denied this petition on November 18, 2013.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Environmental Analysis Division, Office of Information Analysis and Access (2842T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–566–0743; fax number: 202–566–0677; email: *bushman.daniel@epa.gov,* for specific information on this notice. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, toll free at (800) 424–9346 (select menu option 3) or (703) 412–9810 in Virginia and Alaska or toll free, TDD (800) 553–7672, *http://www.epa.gov/superfund/contacts/infocenter/.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use chlorsulfuron. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry	Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*. *Exceptions and/or limitations exist for these NAICS codes. Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 et seq.) (correspond to SIC 4953, Refuse Systems).
Federal Government	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Some of the entities listed in the table have exemptions and/or limitations regarding coverage, and other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under Docket ID No. EPA–HQ–TRI–2013–0393. 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 OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility 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 OEI Docket is (202) 566–1752.

II. Introduction

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106. Congress established an initial list of toxic chemicals that comprised more than 300 chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets criteria for these actions. EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria in Section 313(d)(2) are met. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. EPCRA section 313(d)(3) states that a chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in EPCRA section 313(d)(2)(A)–(C). The EPCRA section 313(d)(2)(A)–(C) criteria are:

- The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.
- The chemical is known to cause or can reasonably be anticipated to cause in humans:
  - cancer or teratogenic effects, or
  - serious or irreversible—
    - reproductive dysfunctions,
    - neurological disorders,
    - heritable genetic mutations, or
    - other chronic health effects.
- The chemical is known to cause or can be reasonably anticipated to cause, because of:
  - its toxicity,
  - its toxicity and persistence in the environment, or
  - its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the section 313(d)(2)(A) criterion as the ''acute human health effects criterion;'' the section 313(d)(2)(B) criterion as the ''chronic human health effects criterion;'' and the section 313(d)(2)(C) criterion as the ''environmental effects criterion.''

Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479) to provide guidance regarding the recommended content and format for submitting petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compounds categories. EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432) a statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals.

III. What is the description of the petition?

On May 18, 2012, EPA received a petition from DuPont Crop Protection (DuPont), Technology Sciences Group Inc. (TSG) requesting EPA to delete chlorsulfuron (Chemical Abstracts Service Registry Number (CASRN) 64902–72–3) from the list of chemicals subject to reporting under EPCRA section 313 and PPA section 6607 (Reference (Ref. 1)). Chlorsulfuron was added to the EPCRA section 313 chemical list on November 30, 1994, based on concerns for developmental and reproductive toxicity (59 FR 61432). DuPont contends that newer studies show that chlorsulfuron does not cause developmental or reproductive toxicity and therefore no longer meets the EPCRA section 313(d)(2) criteria for listing. While the petition addressed the acute human health effects criterion of section 313(d)(2)(A) and chronic human health effects criterion of section 313(d)(2)(B), it did not address the environmental effects criterion of section 313(d)(2)(C).

IV. What is EPA's evaluation of the human health toxicity of chlorsulfuron?

EPA's evaluation of the toxicity of chlorsulfuron included a review of the original 1994 listing decision (59 FR 1788, January 12, 1994 and 59 FR 61432, November 30, 1994), the 2002 Chlorsulfuron Toxicology Chapter (Ref. 2), the **Federal Register** Notice for Chlorsulfuron Pesticide Tolerance (67 FR 52866, August 14, 2002), and the Reregistration Eligibility Decision (RED) for Chlorsulfuron (Ref. 3). EPA also reviewed the findings of relevant studies published since the RED for chlorsulfuron was published (Ref. 4). Unit IV.A. below outlines evidence of human health toxicity from these existing EPA hazard characterizations and Unit IV.B. provides a brief summary of the findings from recently published studies. Unit IV.C. provides a summary of the ecological toxicity of chlorsulfuron from the existing EPA hazard characterizations.

A. Review of the Reregistration Eligibility Decision for Chlorsulfuron

1. Kinetics and Metabolism

EPA concluded that chlorsulfuron is rapidly absorbed, metabolized, and eliminated when administered orally to rats (Ref. 2). There are no differences in absorption, distribution, and elimination of chlorsulfuron related to sex, dose, or treatment regimen. In one study, the major routes of elimination were found to be urine (58–72%) and feces (20–35%) with small amounts (0.1–0.2%) remaining in tissues (primarily in the liver and whole blood) three days after dosing (Ref. 5). This same study identified the major metabolic pathway of chlorsulfuron as the contraction of the sulfonylurea linkage followed by oxidation and hydroxylation to form IN–70941, IN–70942, Metabolite P5 (desmethyl IN–70942), and Metabolite P4 (OH-desmethyl IN–70942). The cleavage of the sulfonylurea linkage to form Metabolite IN–E9260 was identified as the minor metabolic pathway. No additional information on the absorption, distribution, metabolism, and excretion of chlorsulfuron was found in the literature.

2. Effects of Acute Exposure

EPA concluded that chlorsulfuron has no significant acute toxicity (Ref. 2). The conclusion was based on the results of a dermal study (Ref. 6), an inhalation study (Ref. 7) and on an oral study (Ref. 8).

3. Effects of Repeated Exposure

a. Effects of subchronic exposure. As stated in the 2002 Chlorsulfuron Toxicology Chapter (Ref. 2), there are few subchronic studies of chlorsulfuron in the literature. No 21- or 90-day dermal toxicity studies or 90-day inhalation studies were identified. Two subchronic oral toxicity studies were identified and summarized in the 2002 Chlorsulfuron Toxicology Chapter (Ref. 2). In a 90-day oral toxicity study, Smith et al. (Ref. 9) administered chlorsulfuron (100%) to 10 ChR–CD®-1 mice/sex/dose at dietary concentrations of 0, 500, 2,500, 5,000, and 7,500 ppm (equivalent to 0, 150, 783, 1,557, 2,130 milligrams/kilogram/day (mg/kg/day) in males and 0, 220, 1,214, 2,134, 3,176 mg/kg/day in females). The authors reported a lowest-observed-adverse-effect level (LOAEL) of 2,130 mg/kg/day based on increased incidence of retinal dysplasia. This study, however, lacked clinical chemistry and organ weight data. In a 6-month oral toxicity study, Schneider et al. (Ref. 10) administered chlorsulfuron (95%) to purebred Beagle dogs (4/sex/dose) in the diet at dose levels of 0, 100, 500, and 2,500 ppm (equivalent to 0, 3.7, 18.5, and 82.3 mg/kg/day). The authors reported a LOAEL of 82.3 mg/kg/day based on decreased body weight gain in females. Female body weight decreases were slight (91%, 93%, and 87% of control group in the low, mid, and high dose groups, respectively) and body weight decreases were observed in the treatment groups prior to treatment. The authors also noted that high-dose females also exhibited a lower food intake. Additionally, it does not appear that the animals were randomized by body weight at the beginning of the study, which makes these body weight findings more difficult to interpret. No other treatment-related effects were observed in any hematological, clinical chemistry, organ weights, or gross and microscopic pathology in animals of either sex. EPA concluded that the subchronic oral database does not identify toxicity to any particular target organ (Ref. 2).

b. Carcinogenicity. EPA concluded there is no evidence of carcinogenicity in rats or mice following oral exposure to chlorsulfuron (Ref. 2). In a chronic toxicity study, Wood et al., (Ref. 11) administered chlorsulfuron (95%) to 80 CD® rats/sex/dose in the diet at dose levels of 0, 100, 500, and 2,500 (equivalent to 0, 5, 25, and 125 mg/kg/day) for two years. The authors reported that the unilateral incidence of interstitial cell tumors was within the known spontaneous range for CD® rats and that there were no other changes suggestive of a treatment-related tumorigenic effect in the testes. In a similar carcinogenicity study, Wood et al., (Ref. 12) administered chlorsulfuron (91.9–95%) to 80 CD–1 mice/sex/dose in the diet at dose levels of 0, 100, 500, and 5,000 ppm (equivalent to 0, 15, 108, and 750 mg/kg/day) for two years. The authors reported no treatment-related increase in tumor incidence. No additional carcinogenicity studies were identified in the literature.

4. Reproductive and Developmental Toxicity

While the rabbit toxicity study cited in the 1994 **Federal Register** TRI listing of chlorsulfuron (59 FR 1788, January 12, 1994) reported a treatment-related increase in fetal resorptions and decrease in the mean incidence of live fetuses per litter at 75 mg/kg/day (Ref. 13), the results were not strongly indicative of a dose-response effect, were not able to be replicated in a follow-up study, and have recently been reanalyzed with improved methods. In this 1980 study cited in the original TRI listing of chlorsulfuron, Hoberman (Ref. 13) administered chlorsulfuron to pregnant female New Zealand white rabbits by oral intubation at doses of 0, 10, 25, and 75 mg/kg on days 6–19 of gestation. The author reported no significant changes in maternal body weight, uterine weight, ovarian weight, corpora lutea, visceral anomalies, or implantations. The author concluded that the increased mean incidence of resorptions in the highest dose group (31.3% versus 11.6% in the control group) and the decreased mean of live fetuses in the highest dose group (59.8% versus 88.5% in the control group) were significant treatment-related effects. A subsequent 1991 study performed in accordance with EPA guidelines (Ref. 14), however, was not able to replicate these findings using similar methods and higher doses (Ref. 15). This study concluded that chlorsulfuron does not cause an increase in fetal resorptions or decrease in fetal viability in rabbits up to 1,000 mg/kg/day, the highest dose tested (Ref. 15). Moreover, the 2002 Chlorsulfuron Toxicology Chapter (Ref. 2), the **Federal Register** Notice on Chlorsulfuron Pesticide Tolerance (67 FR 52866, August 14, 2002), and the Reregistration Eligibility Decision for Chlorsulfuron (Ref. 3) do not include fetal resorptions or decreased fetal viability as a part of the chlorsulfuron hazard characterization.

The 1994 **Federal Register** TRI listing of chlorsulfuron (59 FR 1788, January 12, 1994) also cited a slight treatment-related decrease in maternal fertility in the F3 generation observed in a rat chronic toxicity study (Ref. 11), but these findings have since been questioned. The design of this study is briefly summarized in the above Carcinogenicity Section (Unit IV.A.3.b.). The 2002 Chlorsulfuron Toxicology Chapter (Ref. 2) and the **Federal Register** Notice on Chlorsulfuron Pesticide Tolerance (67 FR 52866, August 14, 2002) concluded that the findings of this study are of questionable significance due to several study deficiencies. This study did not satisfy the current guideline (Ref. 14) requirements and contains numerous deficiencies including but not limited to: (1) No assessment of estrous cyclicity, (2) no assessment of male reproductive performance, (3) no gross pathology or histopathology examination of parental animals, (4) no assessment of developmental landmarks, and (5) histopathology examinations were conducted only for the F3B generation (Ref. 2; 67 FR 52866, August 14, 2002). As such, EPA classified this study as unacceptable.

EPA concluded that developmental toxicity was observed in both the rabbit (Ref. 15) and rat (Ref. 16), as evidenced by decreased fetal body weight (Ref. 2). However, treatment-related fetal body weight decreases in the rabbit study (Ref. 15) were slight (10%), occurred at a moderately high dose (LOAEL of 400 mg/kg/day), and were observed in the absence of other developmental effects. Additionally, decreased fetal body weight occurred in the presence of decreased maternal body weight. Adjusted maternal body weight gains throughout the study (days 0–29) in the highest treatment groups (original study: 200, 400 mg/kg/day; supplemental study: 400, 1,000 mg/kg/day) were substantially lower than those in the control group (78%, 54%, 43%, and 43% of control, respectively). In the original and supplemental studies, however, the adjusted maternal body weight gains in the treatment groups appeared to fall within the range of normal variation of control group animals. Also, the final adjusted maternal body weights in both these studies were not statistically different among treatment and control groups. Furthermore, it is not apparent that the study authors examined food consumption or food efficiency in either study. It is important to note that a dose of 1,000 mg/kg/day resulted in a high percentage of maternal mortality (i.e., much greater than 10%), which makes the developmental data in this dose group unreliable and of limited value based on the EPA Developmental Test Guidelines (Ref. 17). In the rat study, fetal toxicity was limited to decreased fetal weight in the highest dose group (1,500 mg/kg/day) and there were no teratogenic effects observed (Ref. 16). Dams in the highest dose group exhibited vaginal discharge associated with alopecia. Based on these data, the authors determined that the maternal LOAEL was 500 mg/kg/day and the developmental LOAEL was 1,500 mg/kg/day for rats.

5. Mutagenicity

A few mutagenicity studies were identified in the 2002 Chlorsulfuron Toxicology Chapter (Ref. 2), but none of these studies provided evidence of mutagenicity. Therefore, EPA concluded that there is no concern for mutagenicity of chlorsulfuron.

6. Neurotoxicity

There is no evidence of neurotoxicity in any study of chlorsulfuron.

7. Other Chronic Toxicity

In addition to the body weight findings from Alvarez (Refs. 15 and 16) discussed in the above Reproductive and Developmental Toxicity Section (Unit IV.A.4), several other chronic studies derived chlorsulfuron LOAELs based on observed changes in body weight and/or body weight gain. Wood et al. (Ref. 11) reported a LOAEL of 25 mg/kg/day based on decreased body weight in male rats in the highest dose groups (25 and 125 mg/kg/day). The reported decrease in body weight, however, was slight (4–9% and 5–10%, respectively) and decreased body weight gain was not significantly different between the highest treatment group and the control group when measured over the entire study. Additionally, no changes were reported in female rats and no other treatment-related effects were reported in the study. Wood et al. (Ref. 12) reported a LOAEL of 750 mg/kg/day due to decreased body weight and body weight gain in male and female mice. This high LOAEL, however, is indicative of moderately low to low chlorsulfuron toxicity. Atkinson et al. (Ref. 18) reported a LOAEL of 215 mg/kg/day based on

decreased body weight gain in female Beagle dogs. While these reported changes were observed in the absence of decreased food consumption, they were not found to be statistically significant. Moreover, body weight gains decreased in the highest dose group in the first half of the study (weeks 1–26), but there was no treatment-related effect on overall body weight gain over the entire study (weeks 1–52). Based on these findings, the evidence for body weight and body weight changes is not sufficient to conclude that chlorsulfuron is reasonably anticipated to cause serious or irreversible systemic toxicity.

B. Review of Studies Published Since the Reregistration Eligibility Decision for Chlorsulfuron

EPA identified and reviewed all relevant studies on chlorsulfuron that have been published since the RED for Chlorsulfuron (Ref. 3) was issued. After review of the recent literature, EPA concluded that there were no acceptable studies that strongly suggest either acute or chronic toxicity of chlorsulfuron (Ref. 4). Below are brief summaries of the findings from these studies identified in the recent literature.

1. Mylchreest Reproductive Study

In a 2-generation reproduction study, Mylchreest (Ref. 19) administered chlorsulfuron Crl:CD®(SD)IGS BR rats via the diet. The administered dose levels were 0, 100, 500, 2,500, and 7,500 ppm (average daily doses of 0, 6, 30, 151, 456 mg/kg/day in males and 0, 7, 39, 188, 591 mg/kg/day in females) throughout the 10-week premating period and throughout gestation and lactation. This study replicated the design of the Wood (Ref. 11) study with updates to ensure compliance with new EPA guidelines (Ref. 14) and good laboratory practices.

No treatment-related effects were reported in litter size, live birth index, number born dead, viability and lactation indices, clinical examinations, sex ratio, sexual maturation, organ weights, and gross or microscopic observations. The first generation (F1) sex ratio was significantly higher in the highest dose group (55% versus 45% males in the control group), but the authors did not consider this a treatment-related effect because it fell within the historical control range (45–59%). Lower offspring body weights were observed in the highest dose group in both generations, but these differences were not considered adverse because the magnitude of body weight changes was slight (5–7%) and the potential effect of larger litter size on pup weight. The authors reported an offspring no-observed-adverse-effect level (NOAEL) of 456 mg/kg/day in males and 498 mg/kg/day in females (note: the administered dose of 591 mg/kg-day was adjusted for decreased intake during gestation), the highest dose tested.

There were no treatment-related effects on ovarian follicles counts in F1 females, sperm and estrous cycle parameters in parental (P) and F1 adults, mating, precoital interval, fertility, gestation length, number of implantation sites, and implantation efficiency in either generation. As such, the authors reported a reproductive NOAEL of 456 mg/kg/day in males and 498 mg/kg/day in females (**note:** the administered dose of 591 mg/kg-day was adjusted for decreased intake during gestation), the highest dose tested. These results demonstrate that chlorsulfuron did not cause any treatment-related reproductive toxicity and its effects on parental body weight and food efficiency indicate moderately low to low toxicity.

2. Other Studies

In addition to the Mylchreest (Ref. 19) study, three other recent chlorsulfuron toxicity studies were identified in the literature. It is difficult to draw conclusions about these studies' findings, however, due to the lack of basic information provided by the authors. The studies contained numerous deficiencies including, no details on animal species or strain, the body weights of study animals were not reported (only an overall range was given), the age of the test animals was not reported, analytical methods were not described nor was their methodology for the different tests, etc. Given these deficiencies, findings from these studies were of very limited use in the determination of hazard for chlorsulfuron.

In an acute oral toxicity study, Rudaya et al. (Ref. 20) administered chlorsulfuron potassium salt intragastrically in male and female non-pedigreed white rats, male and female mice, and male rabbits of the Chinchilla line. The authors concluded that the LD_{50} (i.e., the dose of a chemical that is lethal to 50 percent of the test organisms) was 5,580 ± 1,002 mg/kg for male rats, 5,500 ± 729 mg/kg for female rats, 2,050 ± 367 mg/kg for male mice, 2,460 ± 312 mg/kg for female mice, and 3,900 ± 451 mg/kg for male rabbits.

In a chronic oral toxicity study, Rudaya et al. (Ref. 21) examined the effect of chlorsulfuron potassium salt administered intragastrically in male white rats. Chlorsulfuron potassium salt was administered orally at dose levels of 0, 0.558, 5.58, and 55.8 mg/kg over 9 months. The authors reported several effects of chlorsulfuron potassium salt on the liver, kidneys, heart, and thyroid gland, and on behavior, but it is unclear from the study whether any of these effects were statistically or biologically significant. Based on these findings, the authors concluded that the no-effect dose of chlorsulfuron potassium salt was 0.558 mg/kg.

Rakitsky and Beloyedova (Ref. 22) studied the acute and chronic effects of several sulfonylurea herbicides, including chlorsulfuron, in rats, mice, dogs, and rabbits. The authors measured central nervous function, liver, kidney, and hematologic function up to several months after exposure. The authors reported an oral LD_{50} in rats of 5,545–6,293 mg/kg in males and females, respectively, and a dermal LD_{50} of 2,500 mg/kg in rabbits. The authors also reported an LC_{50} (4 hours) of >5,900 mg/m^3 in rats. The authors reported a chronic no-observed-effect level (NOEL) of 0.2–5 mg/kg/day for rats, 108 mg/kg/day for mice, and 60.6 mg/kg/day for dogs, but they did not indicate from which health endpoints these NOELs were derived.

C. Review of Ecological Effects

1. Environmental Fate and Degradation

Chlorsulfuron is likely to be persistent and highly mobile in the environment. It may be transported to non-target areas via runoff and/or spray drift (Ref. 3). Degradation in the aquatic environment occurs primarily through hydrolysis at low pH (23 day half-life at pH 5) but it is stable in neutral to basic environments (Ref. 23). Aerobic aquatic metabolism data are not available; however, aerobic soil metabolism data suggest that aerobic aquatic metabolism may occur. Soil degradation half-lives have been reported to vary from 12 to 183 days (Ref. 24).

2. Ecological Toxicity and Hazard

a. Toxicity to aquatic animals. Experimental toxicity values are reported only for a few surrogate species. Estuarine data are limited to a crustacean, a mollusk, and a fish. No amphibians or reptiles were tested (Ref. 3). Chlorsulfuron is practically nontoxic to both freshwater and marine/estuarine fish and slightly toxic to estuarine/marine invertebrates when measured under acute conditions (Ref. 3). Chronic exposure of rainbow trout (*Oncorhynchus mykiss*) to chlorsulfuron resulted in a No Observed Effect Concentration (NOEC) of 32 mg/L (Ref. 25). The observed NOEC for water fleas (*Daphnia magna*) was 20 mg/L (Ref. 26).

b. Toxicity to aquatic plants. In contrast to the data for aquatic animals, for some species of aquatic plants the toxicity of chlorsulfuron is very high. (Ref. 3). Duckweed (*Lemna gibba*) was the most sensitive aquatic vascular plant (Refs. 27 and 28). Growth rate studies using endpoints for both biomass (dry weight) and the number of normal fronds found 14 day EC_{50}'s (concentration at which 50% of the plants are affected) of 3.5×10^{-4} milligrams per liter (mg/L) and 4.2×10^{-4} mg/L respectively (Table I). The 14 day NOEC for both biomass and the number of normal fronds was 0.24 µg/L (micrograms per liter) (Table I). The most sensitive nonvascular aquatic plant was the green alga *Pseudokirchneriella subcapitata* (formerly *Skeletonema costatum*) (120 hour (hr) EC_{50} = 0.05 mg/L; 120 hr NOEC = 0.0094 mg/L) (Refs. 29 and 30) and measured acute toxicity to the freshwater blue-green alga *Anabaena flos-aquae* was also quite high (Refs. 31 and 32) (Table I).

TABLE I—SUMMARY OF ACUTE AND CHRONIC TOXICITY DATA OF CHLORSULFURON TO FRESHWATER AQUATIC PLANTS AND ALGAE

Species	Common name	Toxicity	Citation
Pseudokirchneriella subcapitata (formerly known as *Selenastrum capricornutum*).	Green Algae	120 hr EC_{50} = 0.05 mg/L (cell density); 120 hr NOEC = 0.0094 mg/L (cell density).	Refs. 29 and 30.
Lemna gibba	Freshwater Duckweed	14 day EC_{50} = 3.5×10^{-4} mg/L (biomass); 14 day EC_{50} = 4.2×10^{-4} mg/L (number of normal fronds); 14 day NOEC = 2.4×10^{-4} mg/L (for both biomass and normal fronds).	Refs. 27 and 28.
Anabaena flos-aquae	Cyanobacteria	120 hr EC_{50} = 0.609 mg/L (area under the growth curve); 120 hr EC_{50} = 1.77 mg/L (mean specific growth rate); 120 hr EC_{50} = 0.807 mg/L (cell counts); 120 hr NOEC = 0.236 mg/L (area under the growth curve); 120 hr NOEC = 0.485 mg/L (mean specific growth rate); 120 hr NOEC = 0.236 mg/L (cell counts).	Refs. 31 and 32.

c. Toxicity to terrestrial animals. Chlorsulfuron is practically nontoxic to birds and mammals in acute exposure regimes and chlorsulfuron is also practically nontoxic to birds given subacute dietary exposures (Refs. 3 and 33). Chronic toxicity to northern bobwhite quail (*Colinus virginianus*) included significant reductions in female body weight, decreased 14-day old survival, decreased number of normal hatchlings, decreased number of viable embryos (Ref. 34).

d. Toxicity to terrestrial plants. Chlorsulfuron exposure is known to affect nontarget plant fruit or seed production and may cause visible disease symptoms days or weeks after exposure (Ref. 3). Short term symptoms include spotting, leaf puckering or twisting, as well as chlorosis and discolored veins. Developmental and reproductive effects of exposure may not become apparent until three or four months after exposure. Reduced fruit development and decreased seed production due to chlorsulfuron exposure has been observed in canola, smartweed, soybean, and sunflower. Thus these types of chronic toxicity effects may be difficult to recognize in the field due to the time lag inherent in their expression.

Available experimental toxicity data for terrestrial plants (Refs. 33 and 34) reveals EC_{25} (concentration at which 25 percent of the organisms are affected) values as low as 1.0×10^{-5} lbs ai/A (pounds active ingredient per acre) measured for vegetative vigor (shoot dry weight) of nontarget plants (sugar beet). NOEC values of 5.4×10^{-6} lbs ai/A for vegetative vigor (shoot dry weight) have been measured for onion and sugar beet.

D. Summary of Human Health and Ecological Toxicity Evaluation

Based on previous EPA hazard characterizations (Refs. 2 and 3; 67 FR 52866, August 14, 2002), there is sufficient evidence to support a low concern for human toxicity from exposure to chlorsulfuron. A more recent guideline (Ref. 14) study (Ref. 15) was not able to replicate findings from one of the studies upon which the addition of chlorsulfuron to the list of toxic chemicals subject to reporting requirements of EPCRA section 313 and section 6607 of the PPA was based (Ref. 13). Additionally, recent assessments of the studies cited in the listing of chlorsulfuron (Refs. 11 and 13) question the validity of these studies' methods and conclusions (Ref. 2; 67 FR 52866, August 14, 2002).

Additionally, no studies that strongly suggest either acute or chronic toxicity of chlorsulfuron were identified in the literature since the publication of the RED for chlorsulfuron (Ref. 3). A relatively recent guideline (Ref. 14) study (Ref. 19) was not able to replicate findings from another one of the studies upon which the addition of chlorsulfuron to the EPCRA section 313 toxic chemical list was based (Ref. 11). The reported findings from the other additional studies (Refs. 20, 21, and 22) were of very limited use in the determination of hazard for chlorsulfuron due to the study deficiencies previously outlined. While treatment-related body weight changes were observed in the Mylchreest study (Ref. 19), these changes were observed at a relatively high dose level (close to 500 mg/kg/day) and were observed in the absence of any other treatment-related effects.

Based on EPA's review of the available data, there is no compelling evidence of the acute toxicity, carcinogenicity, reproductive or developmental toxicity, mutagenicity, or other serious chronic toxicity of chlorsulfuron. While treatment-related body weight changes were observed in some studies, the evidence for these changes is not sufficient to conclude

that chlorsulfuron is expected to cause serious or irreversible systemic toxicity. Therefore, chlorsulfuron is not reasonably anticipated to cause acute or chronic toxicity in humans.

Chlorsulfuron has low toxicity to most aquatic and terrestrial animals. However, chlorsulfuron is highly toxic to some species of aquatic plants. Toxicity values (EC_{50}s) for aquatic plants are as low as 3.5×10^{-4} mg/L indicating very high toxicity (Ref. 3).

V. What is EPA's rationale for the denial?

EPA is denying the petition to delete chlorsulfuron from the EPCRA section 313 list of toxic chemicals. This denial is based on EPA's conclusion that chlorsulfuron can reasonably be anticipated to cause toxicity to aquatic plants. Chlorsulfuron has been shown to have an adverse effect on aquatic plant growth at very low concentrations with an EC_{50} of 3.5×10^{-4} mg/L for duckweed and an EC_{50} of 0.05 mg/L for green algae as well as EC_{50} of 0.609 mg/L for blue green algae. Therefore, EPA has concluded that chlorsulfuron meets the EPCRA section 313(d)(2)(C) listing criteria based on the available environmental toxicity data.

Because EPA believes that chlorsulfuron is highly toxic to aquatic plants, EPA does not believe that an exposure assessment is appropriate for determining whether chlorsulfuron meets the criteria of EPCRA section 313(d)(2)(C). This determination is consistent with EPA's published statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals (59 FR 61432, November 30, 1994).

VI. References

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–TRI–2013–0393. The public docket includes information considered by EPA in developing this action, including the documents listed below, which are electronically or physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the above **FOR FURTHER INFORMATION CONTACT** section.

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List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: November 18, 2013.

Arnold E. Layne,

Director, Office of Information Analysis and Access.

[FR Doc. 2013–28365 Filed 12–6–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 13–284; RM–11704; DA 13–2241]

Radio Broadcasting Services; Evart and Ludington, Michigan

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes, at the request of Synergy Lakeshore Licenses, LLC (''Synergy''), licensee of Station WMLQ(FM), Manistee, Michigan, the deletion of vacant FM Channel 274A at Evart, Michigan. The document also proposes the return of Stations WMLQ(FM), Manistee, and WMOM(FM), Pentwater, Michigan, to the channels that they previously occupied, and the modification of the construction permit for a new FM station at Ludington, Michigan. *See* **SUPPLEMENTARY INFORMATION**, *supra.*

DATES: Comments must be filed on or before January 13, 2014, and reply comments on or before January 28, 2014.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: David D. Oxenford, Esq., Wilkinson Barker Knauer, LLP, 2300 N Street NW., Suite 700, Washington, DC 20037–1128.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes or Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No.13–284, adopted November 21, 2013, and released November 22, 2013. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via email *www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Previously, we allotted Channel 274A at Evart, Michigan. In order to accommodate this new allotment, we modified the licenses for Station WMOM(FM), Pentwater, from Channel 274A to Channel 242A, and Station WMLQ(FM), Manistee, from Channel 249A to Channel 282A. We required the ultimate permittee of Channel 274A at Evart to reimburse Stations WMOM(FM) and WMLQ(FM) for their reasonable costs in changing channels. We also substituted Channel 249A for vacant Channel 242A at Ludington, Michigan. See 74 FR 13125, March 26, 2009.

The document solicits comment on whether vacant Channel 274A at Evart should be deleted because it went unsold in Auction 94. Interested parties should file comments expressing an interest in this vacant allotment to prevent its removal and provide an explanation as to why they did not participate in our competitive bidding process.

We issue an Order to Show Cause to the licensee of Station WMOM(FM), Pentwater, to show cause as to why its license should not be modified to specify Channel 274A in lieu of Channel 242A. We also propose to modify the construction permit for a new FM station at Ludington, Michigan, from Channel 249A to Channel 242A in order to accommodate the previously discussed channel changes. It is not

necessary to issue an Order to Show Cause because the permittee has voluntarily consented to this channel change.

The document also solicits comment on whether Stations WMOM(FM) and WMLQ(FM) would seek reimbursement for application costs in implementing these channel changes in the event that we delete Channel 274A at Evart and, if so, whether these expenses are reimbursable and by whom. Conversely, if we retain Channel 274A at Evart, the document solicits comment on whether the holder of the Ludington construction permit would consent to reimburse Station WMLQ(FM) for the costs of its channel change because the Ludington permittee would not have to wait for the auctioning of the Evart allotment in order to commence operations at Ludington.

Finally, the proposed reference coordinates for Channel 274A at Penwater are 43–52–10 NL and 86–21–32 WL. With respect to Ludington, a staff engineering analysis reveals that the transmitter site specified in the construction permit for Channel 249A at Ludington is not fully spaced if we substitute Channel 242A. We have identified an alternate site for Channel 242A at Ludington that is fully spaced at reference coordinates 43–54–30 NL and 86–26–10 WL. The proposed reference coordinates for Channel 249A at Manistee are 44–14–07 NL and 86–19–05 WL.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing, Evart, Channel 274A; by removing Chanel 249A at Ludington and by adding Channel 242A at Ludington.

[FR Doc. 2013–29293 Filed 12–6–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[GN Docket No. 12–354; FCC 13–144]

Commission Seeks Comment on Licensing Models and Technical Requirements in the 3550–3650 MHz Band; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a document published in the **Federal Register** on December 4, 2013. This correction notes that the document incorrectly referred to itself as a ''proposed rule'' or ''notice of proposed rulemaking'' rather than a ''document.'' In addition, the reply comment date for the document is December 20, 2013, and not March 20, 2013.

DATES: The comment due date for the proposed rule published December 4, 2013, at 78 FR 72851, remains December 5, 2013. Reply comments are due December 20, 2013.

FOR FURTHER INFORMATION CONTACT: Paul Powell, Attorney Advisor, Wireless Bureau—Mobility Division at (202) 418–1613 or *Paul.Powell@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc. 2013–28254, in the issue of December 4, 2013, at 78 FR 72851, make the following corrections:

1. On page 72851, in the **SUMMARY** section, remove ''notice of proposed rulemaking'' and add in its place ''document.''

2. On page 72851, in the **DATES** section, revise the reply comment date to read ''December 20, 2013.''

3. On page 72852, in the left column in the **SUPPLEMENTARY INFORMATION** section, remove '', Notice of Proposed Rulemaking, 78 FR 1188 (January 8, 2012) (NPRM or 3.5 GHz NPRM)''.

4. On page 72852, in the center column, revise the subject heading ''Synopsis of the Public Notice of Proposed Rulemaking'' to read ''Synopsis of the Document''.

5. Beginning on page 72852, in the third column, at the second paragraph of section I (Introduction) in the **SUPPLEMENTARY INFORMATION** section, revise the terms ''proposed rule'' and ''notice of proposed rulemaking'' to read ''document''.

Dated: December 4, 2013.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison.

[FR Doc. 2013–29294 Filed 12–4–13; 4:15 pm]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 130820738–3738–01]

RIN 0648–BD62

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Air Force Launches, Aircraft and Helicopter Operations, and Harbor Activities Related To Launch Vehicles From Vandenberg Air Force Base (VAFB), California

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the U.S. Air Force (USAF) for authorization to take marine mammals, specifically pinnipeds, by harassment, incidental to launches, aircraft and helicopter operations from VAFB launch complexes and *Delta Mariner* operations, cargo unloading activities, and harbor maintenance dredging in support of the Delta IV/Evolved Expendable Launch Vehicle (EELV) launch activity on south VAFB from February 2014 to February 2019. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue regulations and subsequent Letters of Authorization (LOAs) to the USAF to incidentally harass marine mammals.

DATES: Comments and information must be received no later than January 8, 2014.

ADDRESSES: You may submit comments on this document, identified by 0648–BD62, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to: *www.regulations.gov,* enter 0648–BD62 in the ''Search'' box, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.
- *Fax:* 301–713–0376, Attn: Candace Nachman.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

A copy of the application containing a list of references used in this document may be obtained by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this proposed rule may also be viewed, by appointment, during regular business hours at the above address. To help NMFS process and review comments more efficiently, please use only one method to submit comments.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) 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, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may 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 certain subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking 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.''

The National Defense Authorization Act of 2004 (NDAA) (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA): ''(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].''

Based on a previous request from the USAF, NMFS issued regulations and LOAs to the USAF to allow it to take species of pinnipeds at the VAFB. Those regulations and LOAs expire on February 6, 2014.

Summary of Request

On June 24, 2013, NMFS received an application from the USAF requesting an LOA for the take of five species of pinnipeds incidental to USAF launch, aircraft, and helicopter operations from VAFB launch complexes and *Delta Mariner* operations, cargo unloading activities, and harbor maintenance dredging. The *Delta Mariner* operations, cargo unloading, and harbor maintenance dredging are conducted in support of the Delta IV/EELV launch activity from Space Launch Complex 6 on south VAFB. NMFS proposes regulations to govern these activities, to be effective from February 7, 2014, through February 7, 2019. The USAF is requesting a 5-year LOA for these activities. These training activities are classified as military readiness activities. The USAF states that these activities may result in take of marine mammals from noise or visual disturbance from rocket and missile launches, as well as from the use of heavy equipment during the *Delta Mariner* off-loading operations, cargo movement activities, increased presence of personnel, and harbor maintenance dredging. The USAF requests authorization to take annually five pinniped species by Level B Harassment.

Activities relating to the *Delta Mariner* operations have been previously authorized by NMFS under annual Incidental Harassment Authorizations (IHAs). To date, we have issued 10 IHAs to United Launch Alliance (working on behalf of the USAF) to take marine mammals incidental to conducting operations in support of Delta IV/EELV launch activity from Space Launch Complex (SLC) 6. The most recent IHAs was effective from September 26, 2012, through September 25, 2013. Through this proposed rulemaking, NMFS and the USAF are incorporating the *Delta Mariner* operations into the rulemaking for the launch, aircraft, and helicopter operations at VAFB. *Delta Mariner* operations will not resume until a final rule and subsequent LOA are issued to cover the incidental take of marine mammals in the vicinity of the proposed operations.

Description of the Specified Activity

VAFB Launch Activities and Aircraft and Helicopter Operations

VAFB (see Figure 1 in the USAF application) is headquarters to the 30th Space Wing (SW), the Air Force Space Command unit that operates VAFB and the Western Range. VAFB operates as a missile test base and aerospace center, supporting west coast space launch activities for the USAF, Department of Defense, National Aeronautics and Space Administration, and commercial contractors. VAFB is the main west coast launch facility for placing commercial, government, and military satellites into polar orbit on expendable (unmanned) launch vehicles, and for testing and evaluating intercontinental ballistic missiles (ICBM) and sub-orbital target and interceptor missiles. In

addition to space vehicle and missile launch activities at VAFB, there are helicopter and aircraft operations for purposes such as search-and-rescue, delivery of space vehicle components, launch mission support, security reconnaissance, and training flights. The USAF anticipates that the space and missile launch frequency will not exceed a combined total of 50 launches (35 rockets and 15 missiles) per year from VAFB. Table 1 in this document outlines the numbers of rocket and missile launches that occurred in 2011, 2012, and 2013. Although subject to change, Table 2 presents preliminary estimates of the numbers of rocket and missile launches from VAFB during calendar years 2014 through 2019. Estimates for the earlier years are likely more accurate than those for the last two to three years. However, as noted earlier, the launch frequency is not anticipated to exceed 50 launches in a given year. Any launches over this amount would require additional coordination between NMFS and the USAF before they occur.

TABLE 1—NUMBERS OF ROCKET AND MISSILE LAUNCHES IN CALENDAR YEARS 2011, 2012, AND 2013, FROM VAFB

Year	Rocket launches	Missile launches
2011	7	2.
2012	2	2.
2013	4 (as of Sept. 24, 2013, 3 rockets launched with 1 additional planned before Dec. 31).	5 (as of Sept. 24, 2013, 3 missiles launched with 2 additional planned before Dec. 31).

TABLE 2—PRELIMINARY NUMBERS OF PROJECTED ROCKET AND MISSILE LAUNCHES IN CALENDAR YEARS 2014 THROUGH 2019 FROM VAFB

[The projections for calendar years 2018 and 2019 are highly preliminary at this time]

Year	Rocket launches	Missile launches
2014	6	6
2015	9	5
2016	9	6
2017	4	5
2018	9	6
2019	12	7

There are currently six active facilities at VAFB used to launch satellites into polar orbit. These facilities support launch programs for the Atlas V, Delta II, Delta IV, Falcon 9, Minotaur, and Taurus rockets. Various booster and fuel packages can be configured to accommodate payloads. Details on the vehicle types and the sound exposure levels (SELs) produced by each missile or rocket are described in the following sections.

(1) Atlas V

The Atlas V vehicle is launched from Space Launch Complex (SLC)-3E on south VAFB. This SLC is approximately 9.9 km (6.2 mi) from the main haul-out area on VAFB, known as North Rocky Point (see Figure 2 in the USAF application), which encompasses several smaller pinniped haul-out sites. SLC–3E is approximately 11.1 km (6.9 mi) from the closest north VAFB haul-out, known as the Spur Road haul-out site (Figure 3 in the application) and 13.5 km (8.4 mi) from the next closest haul-out, the nearby Purisima Point haul-out site (Figure 3 in the application).

The Atlas V is a medium lift vehicle that can be flown in two series of configurations—the Atlas V400 series and the Atlas V500 series. Both series use the Standard Booster as the single body booster. The V400 series accommodates a 4.2 m (13.8 ft) payload fairing and as many as three solid rocket boosters. The V500 series accommodates a 5.4 m (17.7 ft) fairing and as many as five solid rocket boosters. The Atlas V400 series will lift as much as 7,800 kg (17,196 lbs) into geosynchronous transfer orbit or as much as 13,620 kg (30,027 lbs) into low earth orbit. The Atlas V500 series will lift as much as 8,700 kg (19,180 lbs) into geosynchronous transfer orbit or as much as 21,050 kg (46,407 lbs) into low earth orbit. The Atlas V consists of a common booster core (CBC) 3.8 m (12.5 ft) in diameter and 32.5 m (106.6 ft) high) powered by an RD180 engine that burns a liquid propellant fuel consisting of liquid oxygen and RP1 fuel (kerosene). The RD180 engine provides 840,000 lbs of thrust on liftoff. There is a Centaur upper stage (3.1 m (10.2 ft) in diameter and 12.7 m (41.7 ft) high) powered by a liquid oxygen and liquid hydrogen fuel.

The first Atlas V launch occurred on March 13, 2008. Acoustic monitoring was conducted for this launch at VAFB. However, an equipment malfunction during the launch prevented the proper functioning of the digital audio tape (DAT) recorder during the launch. Since acoustic data was only gathered with the sound level meter (SLM), not all metrics were obtained for that launch. The Atlas V launch had an A-weighted SEL (ASEL) of 96.5 dB (MSRS, 2008c). The Atlas V was predicted to create a sonic boom of as much as 7.2 pounds per square foot (psf), impacting the NCI including San Miguel Island (SMI). The size of the actual sonic boom depends on meteorological conditions, which can vary by day and season and with the trajectory of the vehicle. A sonic boom greater than 1 psf was predicted for the initial Atlas V launch; thus, acoustic monitoring was performed on SMI. Measurements conducted at Cardwell Point indicated a sonic boom of 1.24 psf with a rise time of 2.4 milliseconds (ms).

Because of the equipment malfunction, VAFB conducted acoustic modeling of the second Atlas V launch, which occurred on October 18, 2009. Acoustic measurements at VAFB were made at Oil Well Canyon (see Figure 2 in USAF's application) approximately 9.8 km (6.1 mi) southwest of SLC–3E (MSRS, 2009). The DAT recorder provided detailed information on the launch noise. The A-weighted 1-hour average sound levels at VAFB in the Oil Well Canyon area typically range from 35 to 60 dB with an average of 52 dB (Thorson *et al.,* 2001). During the launch, the unweighted SEL was 125.2 db, while the C-weighted SEL was 119.0 db and the A-weighted SEL was 95.2 db. The unweighted peak level was 118.6 db and the A-weighted peak level was 116.2 db. The majority of the sound from the Atlas V DMSP–18 was produced within the first 120 seconds of the launch, but some low-frequency rumbling and crackling was audible for over 5 minutes after launch (MSRS, 2009).

VAFB conducted another Atlas V launch on April 14, 2011, with acoustic monitoring conducted at SMI. As described in VAFB (2011), testing indicated that the sonic boom consisted of two positive peaks separated by approximately 100 milliseconds (about one-tenth of a second), followed by a negative spike (underpressure) in which the two corresponding arrival times of the positive peaks nearly coincided. This represented the compression and release of air from a double shock wave from a sonic boom. The maximum overpressure at the recording site on SMI was 1.01398 psf, and the

unweighted peak was 109.4 dB re 20 μPa at 2.66 Hz. The frequency spectrum of the acoustic energy was predominantly low frequency, with unweighted peak levels exceeding 80 dB re 20 μPa below 500 Hz. The highest energy was below 100 Hz.

(2) Delta II

The Delta II is launched from SLC–2 on north VAFB (see Figure 3 in the USAF application) approximately 2 km (1.2 mi) from the Spur Road harbor seal haul-out site and 2.3 km (1.4 mi) from the Purisima Point haul-out site. The Delta II is a medium-sized launch vehicle approximately 38 m (124.7 ft) tall. The Delta II uses a Rocketdyne RS–27A main liquid propellant engine and additional solid rocket strap-on graphite epoxy motors (GEMs) during liftoff. A total of three, four, or nine GEMs can be attached for added boost during liftoff. When nine GEMs are used, six are ignited at liftoff, and three are lit once the rocket is airborne. When three or four GEMs are used they are all ignited at liftoff. The number of GEMs attached to each vehicle will determine the amount of sound power produced by the vehicle.

Eight Delta II launches have been acoustically quantified near the Spur Road harbor seal haul-out site. The Delta II is the second loudest of the space launch vehicles (SLVs) at the Spur Road haul-out site, the Taurus vehicle being the loudest. The Delta II has an unweighted SEL measurements (based on the six initial acoustically-measured launches) ranging from 126.5 to 128.8 dB and averaging 127.4 dB, as measured by the DAT recorder. The C-weighted SEL (CSEL) ranged from 124.3 to 126.7 dB with an average of 125.4 dB (DAT). The ASEL measurements from both a SLM and the DAT were similar, ranged from 111.8 to 118.2 dB, and had an average of 114.5 dB (DAT). The maximum fast A-weighted sound level (Lmax) values ranged from 104.2 to 112.5 dB and averaged 109.5 dB.

Sonic booms have been measured on SMI from three Delta II launches: the EO–1, Iridium MS–12, and AURA (November 2000, February 2002, and July 2004, respectively). Both the Iridium MS–12 and AURA had two small sonic booms impact the Point Bennett area of SMI. Iridium MS–12 had peak overpressures of 0.47 and 0.64 psf and rise times of 18 and 91 ms, while AURA had peak overpressures of 0.79 and 1.34 psf and rise times of 9.5 and 10.5 ms. The Delta II EO 1 had a single sonic boom with a peak overpressure of 0.4 psf and rise time of .041 ms.

(3) Delta IV

The Delta IV is launched from SLC–6, which is 2.3 km (1.4 mi) north of the main harbor seal haul-out site at North Rocky Point (see Figure 2 in the USAF application). The Delta IV family of launch vehicles consists of five launch vehicle configurations utilizing a CBC first stage (liquid fueled) and zero, two, or four strap on solid rocket GEMs. The Delta IV comes in four medium lift configurations and one heavy lift configuration consisting of multiple CBCs. The Delta IV can carry payloads from 4,210 to 13,130 kg (9,281 to 28,947 lbs) into geosynchronous transfer orbit.

Because the Delta IV was predicted to be the loudest vehicle at the south VAFB harbor seal haul-out site, it was required that acoustic and biological monitoring be conducted for its first three launches. In addition, harbor seal hearing tests were required before and after each of the first three launches that were not scheduled during pupping season.

The first two Delta IV launches occurred in 2006. Although the Delta IV is larger than the Athena (the vehicle previously launched from this site), it was found after its initial launch (NROL–22, June 2006) that the Delta IV had similar noise levels to the Athena vehicle. As measured by the DAT, the unweighted SEL was 127.7 dB, while the CSEL was 122.9 dB, and the ASEL was 106.2 dB (Fillmore *et al.,* 2006). The Lmax was found to be 103.1 dB (Fillmore *et al.,* 2006).

During the second Delta IV launch (DMSP–17, November 2006), the DAT recorder was located at the VAFB Boathouse (near where the harbor seal hearing tests were performed), rather than at the more usual sound monitoring location of Oil Well Canyon, where an SLM was placed. The DAT measured the unweighted SEL at 131.3 dB, the CSEL at 127.5 dB, and the ASEL at 111.3 dB. The Lmax was measured at 102.6 dB (Thorson *et al.,* 2007).

During the third Delta IV launch (Heavy NROL–49, January 20, 2011), noise levels recorded were in a very similar frequency domain compared to noise levels from the two Delta II launches in 2006, although the Delta IV Heavy launch was somewhat louder. Most sound energy from the rocket launches was below 1 kHz (1000 Hz). With the Delta IV rocket, the highest levels were below 100 Hz. Unweighted peak levels were 131.8 dB re 20 μPa (MSRS, 2011a).

The Delta IV was predicted to create maximum sonic booms of as much as 7.2 psf for the largest of the medium configurations and 8 to 9 psf for the heavy configuration. The size of the actual sonic boom depends on meteorological conditions, which can vary by day and season, and with the trajectory of the vehicle. A sonic boom greater than one psf was predicted for the initial Delta IV launch; thus, acoustic monitoring was performed on SMI. An equipment malfunction resulted in uncertainty regarding the amplitude of the sonic boom that was recorded for the launch, and the peak overpressure from the boom could have ranged from 0.77 psf to as much as 3.36 psf. The rise time was able to be determined and was measured at 8.7 ms. Because sonic booms were not predicted for the second or third Delta IV launches, monitoring was not performed on SMI for either launch.

Capture attempts of harbor seals for the initial Delta IV launch were unsuccessful; therefore, no hearing tests were performed on seals for that launch. Capture attempts for the second Delta IV launch were successful, and hearing tests were performed. There was no evidence that the launch noise from the Delta IV DMSP 17 caused a loss in harbor seal hearing acuity. However, given a 2-hour delay in starting the hearing test due to safety constraints, it is possible that a mild temporary threshold shift (TTS) could have been fully recovered by the time the testing was started. Even so, no long-term hearing loss from the Delta IV launch noise was found (Thorson *et al.,* 2007).

Capture attempts were also successful for the January 20, 2011 Delta IV Heavy launch. Three healthy juvenile harbor seals were captured near Pt. Conception 28 hrs before the launch, and hearing tests were performed (VAFB, 2011). Auditory Brainstem Response (ABR) testing was conducted the day before the launch and nearly 3 hours after the launch. (The delay in post-launch testing was because access to the site was limited after the launch because of personnel safety issues.) The animals showed no change in hearing sensitivity as a result of the tests, although it is possible that a mild TTS, from which the seals had already recovered, could have occurred (MSRS, 2011a). Capture attempts of harbor seals for the fourth Delta IV launch (August 2013) were unsuccessful; therefore, no hearing tests were performed on seals for that launch.

(4) Falcon

The Falcon is the launch vehicle for Space Exploration Technologies (Space X). Space X is a commercial program planning to launch small payloads into low earth orbit from VAFB. The Space X launch vehicle includes the Falcon I SLV, classified as a light-lift vehicle. It

is a two-stage liquid oxygen and rocket grade kerosene powered launch vehicle and is 21.3 m (69.9 ft) in length and 1.7 m (5.6 ft) in diameter (Space X, 2007). The Falcon 1e vehicle is also 1.7 m (5.6 ft) in diameter and has an extended first stage and is 26.8 m (87.9 ft) in length (Space X, 2007). The Falcon I has a thrust of 105,500 lbs (in vacuum), and the Falcon 1e has 115,000 lbs (in vacuum) and are capable of delivering approximately 554 kg (1,221 lbs) into sun synchronous low earth orbit (Space X, 2007). The first Falcon launch from VAFB occurred in September 2013 (VAFB, 2013).

(5) Minotaur

The Orbital Suborbital Program launch vehicle, known as Minotaur I, is launched from SLC–8 on south VAFB (see Figure 2 in the USAF application), approximately 1.6 km (1 mi) from the North Rocky Point haul-out site. The Minotaur I is a four stage, all solid propellant ground launch vehicle (Orbital Sciences Corporation, 2006a). The launch vehicle consists of modified Minuteman II Stage I and Stage II segments, mated with Pegasus upper stages (Orbital Sciences Corporation, 2006a). The Minotaur is a small vehicle, approximately 19.2 m (63 ft) tall (Orbital Sciences Corporation 2006b), with approximately 215,000 lbs of thrust.

Two Minotaur launches were acoustically monitored at VAFB (January 2000 and July 2000). The unweighted SEL measurements varied by 3.5 dB between the two launches and were measured to be 119.4 and 122.9 dB. The CSELs varied less and were measured at 116.6 and 117.9 dB. From the DAT and SLM measurements, the ASEL ranged from 104.9 to 107 dB. The launch noise reached an Lmax level of 101.7 and 103.4 dB. No sonic booms of greater than one psf were predicted to impact the NCI for these two launches nor for a third launch for which only biological monitoring was performed at VAFB given that acoustics had been previously quantified.

An additional test launch of a Minotaur IV is currently planned for late 2015 from north VAFB test-pad 01, which is currently being renovated. The Minotaur IV combines U.S. Government-furnished solid rocket motors from decommissioned Peacekeeper ICBMs with technologies from other Orbital-built launch vehicles, including the Minotaur I, Pegasus, and Taurus. The Minotaur IV launch vehicle consists of an SR118 first stage, SR119 second stage, SR120 third stage, and Orion 38 fourth stage. The payload is 1,735 kg (3,825 lbs). The first Minotaur IV launched from VAFB occurred on April 22, 2010.

(6) Taurus

The Taurus SLV is launched from 576E on north VAFB, approximately 0.5 km (0.3 mi) from the Spur Road harbor seal haul-out site and 2.3 km (1.4 mi) from the Purisima Point haul-out site (see Figure 3 in the USAF application). The standard Taurus is a small launch vehicle, at approximately 24.7 m (81 ft) tall and is launched in two different configurations (Defense Advanced Research Projects Agency (DARPA) and standard) with different first stages providing 500,000 or 400,000 lbs of thrust, respectively. The different vehicle configurations have different thrust characteristics, with the standard configuration providing less thrust than DARPA.

The launch noise from five Taurus launches has been measured near the Spur Road haul-out site. The Taurus is the loudest of the launch vehicles at the Spur Road haul-out site, due to the close proximity of its launch pad to the haul-out site. The unweighted SEL measurements from the four initially measured Taurus vehicles ranged from 135.8 to 136.8 and averaged 136.4 dB. The CSEL measurements were slightly lower than expected, ranging from 133.8 to 134.8 dB and averaged 134.5 dB. The ASEL measurements ranged from 123.5 to 128.9 dB with an average of 126.6 dB (SLM). The Lmax values were measured to range from 118.3 to 122.9 dB and averaged 120.9 dB (SLM). No sonic booms greater than one psf were predicted to impact the NCI for any of the eight Taurus launches monitored since 1998. However, as of October 2013, the Taurus Program is suspended.

(7) ICBM and Missile Defense Agency Interceptor and Target Vehicles

There are a variety of small missiles launched from north VAFB, including the Minuteman III and several types of interceptor and target vehicles for the Missile Defense Agency (MDA) program. Active missile launch facilities (LFs) are spread throughout northern VAFB (see Figure 3 in the application), and are within approximately 0.5 to 2.7 km (0.3 to 1.7 mi) of the Little Sal and Lion's Head haul-out sites, respectively, and approximately 11 to 16.5 km (6.8 to 10.3 mi) north of the Spur Road and Purisima Point haul-out sites. The trajectories of ICBM and MDA launches are generally westward and therefore do not cause sonic boom impacts on the NCI.

ICBM: The Minuteman III missile is an ICBM developed as part of the U.S. strategic deterrence force. The Minuteman III is launched from an underground silo. It is composed of three rocket motors and is 18 m (59 ft) in length by 1.7 m (5.6 ft) in diameter with a first stage thrust of 202,600 lbs.

The launch noise from the June 7, 2002, launch from LF–26 (see Figure 3 in the USAF application) was measured at the Lion's Head haul-out site. This LF is approximately 3 km (1.9 mi) away from the haul-out site. The ASEL measurement of the launch noise was 100.6 dB and the Lmax value of 98.2 dB.

The launch noise from the May 24, 2000, launch from LF–09 (Figure 3 in the application) was measured at the Spur Road haul-out site. At a distance of over 15 km from LF–09, the unweighted SEL measurement was 114.7 dB and the CSEL measurement was 111.6 dB. The ASEL measurement was 26 dB down from the unweighted value and was measured at 88.7 dB. The Lmax was measured to be 83.3 dB.

MDA Interceptor and Target Vehicles: The MDA continues development of various systems and elements, including the Ballistic Missile Defense System (BMDS), the Ground-based Midcourse Defense (GMD) element of BMDS and the Air-Borne Laser (ABL) element.

The BMDS' mission is to defend against threat missiles in each phase or segment of the missile's flight. MDA has been conducting and will continue to conduct BMDS testing at VAFB through 2019 and beyond.

All of the target and interceptor missiles are smaller than the Minuteman III or Peacekeeper missiles previously or currently launched from VAFB. The MDA notes that the actual heights of the missiles will vary depending on the payload and associated electronic packages (e.g., flight termination system) or special modifications. Many of the missile types have interchangeable first or second stage motors; therefore, most may have similar noise characteristics, depending on their configuration. Missiles for which acoustic measurements have previously been made, as well as vehicle size, are included in Table 3 of this document.

TABLE 3—COMPARISON OF SIZE AND SOUND PRODUCED BY ACOUSTICALLY MEASURED MDA MISSILES AND THE MINUTEMAN AND PEACEKEEPER VEHICLES

Missile	Program	Height (m)	Diameter (m)	A-weighted sound exposure level (dB)	Lmax (dB)
Orbital Boost Vehicle	GBI	11.3	0.9	114.5	113.8
Booster Verification Test	GBI	15.8	1.4	114.7	113.8
Minuteman III	USAF Strategic Deterrence Force	18.0	1.7	117.7	112.2
Peacekeeper	USAF Strategic Deterrence Force	21.8	2.3	122.5	117.0

Note: The Minuteman III and Peacekeeper missiles are provided as a comparison to the smaller MDA missiles. Sound levels are from actual launches and were extrapolated to the distance of 1 km to compare each missile.

The main missile programs and missile types are described herein, but others may be implemented before this permit expires. The USAF would notify NMFS of any new missile programs that would be implemented at VAFB. Completely new types of missiles would be monitored acoustically and biologically, during their first launch, even if the launch occurs outside of the pupping season, using the standard launch monitoring protocol for VAFB. However, configuration changes in existing missiles would only be monitored during the pupping season, as is done for all other missile launches.

The MDA's BMDS test plans, including those involving tests from VAFB, are subject to constant change as the BMDS is being developed. Therefore, it is difficult for the MDA to predict with accuracy its future launch schedule or number of launches over the next five years. However, due to test resource limitations, the MDA does not envision conducting more than three missile tests per quarter (on average) over the next five years from VAFB, and none of the missiles would be larger than the Minuteman III. This limitation (i.e., three missiles per quarter and none being larger than the Minuteman III) can be used to establish the potential impacts posed by the MDA testing at VAFB over the next five years. Additionally, Table 2 in this document outlined no more than seven missile launches to be reasonably likely during the proposed period of these regulations and LOA.

In order to compare launch noise from past and current SLVs, as it was received near the north and south VAFB marine mammal haul-out sites, Tables 4 through 6 in this document provide information on the SELs that were measured during previous launch events. Table 4 provides a comparison of SELs as measured at the sound monitoring site by the south VAFB marine mammal haul-out site. Table 5 provides the SELs as measured at the sound monitoring site by the north VAFB Spur Road marine mammal haul-out site. Finally, Table 6 provides the SELs as measured at the sound monitoring site by the north VAFB Lion's Head marine mammal haul-out site. Figures 2 and 3 in the USAF application depict the locations of the haul-out sites.

TABLE 4—SOUND LEVELS FROM LAUNCHES ON VAFB, AS MEASURED BY THE DIGITAL AUDIO TAPE RECORDER NEAR THE SOUTH VAFB MARINE MAMMAL HAUL-OUT SITE

Launch vehicle	Satellite	Launch complex	Launch date	Dist. to haul-out (km)	TSEL (dB)	CSEL (dB)	ASEL (dB)	TPeak (dB)	Lmax (dB)
Delta IV	DMSP–17	SLC–6	4-Nov-06	2.7	131.3	127.5	111.3	129.0	102.6
Titan IV	B–34	SLC–4E	5-Oct-01	8.5	130.2	124.2	104.5	125.0	100.6
Athena II	Ikonos-1	SLC–6	27-Apr-99	2.8	127.9	123.7	107.3	125.6	99.9
Delta IV	NROL–22	SLC–6	27-Jun-06	2.7	127.7	122.9	106.2	130.0	103.1
Titan IV	B–12	SLC–4E	22-May-99	8.5	127.6	121.9	103.6	123.7	97.0
Athena I	Lewis	SLC–6	22-Aug-97	2.8	127.0	121.3	107.3	126.8	101.0
Titan IV	B–28 NRO	SLC–4E	17-Aug-00	8.5	126.8	119.9	99.0	123.5	91.5
Athena II	Ikonos-2	SLC–6	24-Sep-99	2.8	125.9	123.4	107.8	124.6	102.2
Titan IV	A–18	SLC–4E	23-Oct-97	8.5	125.9	119.0	96.6	121.8	88.2
Atlas IIAS	AC–141 Terra	SLC–3E	18-Dec-99	9.9	124.2	113.6	87.3	120.3	76.4
Minotaur	MightySat	SLC–8	19-Jul-00	2.3	122.9	117.9	107.0	122.0	101.7
Titan II	G–7	SLC–4W	19-Jun-99	8.5	120.3	112.3	87.7	121.4	79.1
Minotaur	JAWSAT	SLC–8	26-Jan-00	2.3	119.4	116.6	105.4	125.0	103.4
Titan II	G–12	SLC–4W	13-May-98	8.5	119.3	115.0	95.4	113.0	85.9
Delta II	MS–9	SLC–2	17-May-98	22.0	118.1	103.1	72.4	113.9	61.8
Atlas IIAS	MLV–10	SLC–3E	8-Sep-01	9.9	118.0	112.1	88.5	112.6	80.8
Titan II	G–6	SLC–4W	4-Apr-97	8.5	116.5	112.4	88.5	111.3	76.1
Titan II	G–13	SLC–4W	21-Sep-00	8.5	116.3	109.6	83.5	109.5	74.9
Taurus	KOMPSAT	SLC–576	20-Dec-99	20.3	106.4	101.3	76.4	102.9	65.0

Notes: km = kilometers; TSEL = unweighted SEL; dB = decibels; CSEL = C-weighted SEL; ASEL = A-weighted SEL; Tpeak = unweighted peak sound level; Lmax = maximum fast A-weighted sound level.

TABLE 5—SOUND LEVELS FROM LAUNCHES ON VAFB, AS MEASURED BY THE DIGITAL AUDIO TAPE RECORDER NEAR THE NORTH VAFB SPUR ROAD MARINE MAMMAL HAUL-OUT SITE

Launch vehicle	Satellite	Launch complex	Launch date	Dist. to haul-out (km)	TSEL (dB)	CSEL (dB)	ASEL (dB)	TPeak (dB)	Lmax (dB)
Taurus	MTI	SLC–576	12-Mar-00	0.55	136.8	134.8	125.6	141.8	120.6
Taurus	STEX	SLC–576	3-Oct-98	0.55	136.7	134.7	124.8	142.1	121.4
Taurus	T6	SLC–576	21-Sep-01	0.50	135.8	133.8	123.8	141.5	119.8
Taurus	Lite	SLC–576	6-Feb-03	0.55	133.8	133.1	125.4	144.8	.....
Delta II	MS–9	SLC–2	17-May-98	1.92	128.9	126.7	116.9	137.3	112.5
Delta II	JASON/TIMED	SLC–2	7-Dec-01	2.00	127.7	125.8	114.8	133.0	111.0
Delta II	IMAGE	SLC–2	25-Mar-00	2.06	126.9	125.1	113.9	129.4	109.2
Delta II	Quickbird2	SLC–2	18-Oct-01	2.06	126.9	124.2	111.8	128.7	104.2
Delta II	Landsat	SLC–2	15-Apr-99	2.02	126.5	124.3	114.1	133.3	108.8
Atlas IIAS	AC–141 Terra	SLC–3E	18-Dec-99	11.10	117.2	110.0	86.1	113.0	75.2

Notes: km = kilometers; TSEL = unweighted SEL; dB = decibels; CSEL = C-weighted SEL; ASEL = A-weighted SEL; Tpeak = unweighted peak sound level; Lmax = maximum fast A-weighted sound level.

TABLE 6—SOUND LEVELS FROM LAUNCHES ON VAFB, AS MEASURED BY THE SOUND LEVEL METER NEAR THE NORTH VAFB LION'S HEAD MARINE MAMMAL HAUL-OUT SITE

Launch vehicle	Launch complex	Launch date	Dist. to haul-out (km)	ASEL (dB)	Tpeak (dB)	Lmax (dB)
Minuteman III	LF–04	11–Jun–03	1.15	114.9	131.2	112.1
Peacekeeper	LF–02	12–Mar–03	3.70	106.1	128.8	100.9
BV	LF–23	16–Aug–03	.....	105.5	125.9	102.5
Peacekeeper	LF–02	3–Jun–02	3.70	102.4	126.6	97.8
Minuteman III	LF–26	7–Jun–02	3.15	100.6	121.2	98.2

Notes: km = kilometers; dB = decibels; ASEL = A-weighted SEL; Tpeak = unweighted peak sound level; Lmax = maximum fast A-weighted sound level.

USAF Aircraft Operations

The VAFB airfield, located on north VAFB, supports various aircraft operations further described below. Aircraft operations include tower operations, such as take offs and landings (training operations), and range operations, such as overflights and flight tests. Over the past 4 years, an average of slightly more than 600 flights has occurred each year.

Fixed-wing Aircraft Operations: Various fixed-wing aircraft (jet and propeller aircraft) use VAFB for a variety of purposes, including delivery of space or missile components, launching of space vehicles at high altitude (e.g., the Pegasus), and emergency landings. VAFB is also used for flight testing, evaluation of fixed-wing aircraft, and training exercises, including touch and goes. Three approved routes are used that avoid the established pinniped haul-out sites. Aircraft flown through VAFB airspace and supported by 30th Space Wing include B–1 and B–2 bombers, F–15, F–16, and F–22 fighters, V/X–22, Unmanned Aerial Vehicles, and KC–135 tankers. All aircraft are required to remain outside of the 305-m (1,000-ft) bubble around pinniped rookeries or haul-out sites, except when performing a life-or-death rescue mission, when responding to a security incident, or during an aircraft emergency. There have been no observed impacts to pinnipeds from fixed-wing aircraft operations during launch monitoring or pinniped surveys.

Helicopter Operations: The number of helicopter operations at VAFB has decreased considerably since 2008 with the deactivation of the VAFB helicopter squadron. Other squadrons and units sometimes use VAFB for such purposes as transiting through the area, exercises, and launch mission support. Emergency helicopter operations (e.g., marine search and rescue and wildfire containment actions) are somewhat common. All helicopters are required to remain outside of the 305-m (1,000-ft) bubble around pinniped rookeries or haul-out sites, except when performing a life-or-death rescue mission, when responding to a security incident, or during an aircraft emergency. There have been no observed impacts to pinnipeds from helicopter operations during launch monitoring or pinniped surveys.

Timeframe of USAF Launch and Aircraft Operations

Launch and aircraft operations could occur at any time of the day or night during the period to be covered under this proposed rule and subsequent LOA (February 2014–February 2019). The USAF anticipates that no more than 15 missile and 35 rocket launches would occur in any year. This number is far higher than launch activity in previous years, but one new facility (SLC 4) is being reactivated with intent to increase ''commercial launch'' activity, and Test Pad-01 is being renovated. The USAF notes that activity levels over the 5-year period between February 2014 and February 2019 will not exceed 75 missile and 175 rocket launches without additional coordination with NMFS. All launch operations would occur at VAFB, potentially resulting in launch noise and visual impacts there. Potential sonic boom impacts from SLVs could occur over the NCI. Missiles are launched in a westerly trajectory and do not impact the NCI. Aircraft operations would occur only at VAFB and are anticipated to only impact hauled out pinnipeds when flying at low altitudes (i.e., typically below 305 m [1,000 ft]).

Harbor Activities Related to the Delta IV Evolved Expendable Launch Vehicle

The Delta IV/EELV is comprised of a common booster core, an upper stage, and a payload fairing. The size of the common booster core requires it to be transported to the Base's launch site by a specially designed vessel, the *Delta*

Mariner. The *Delta Mariner* docks at the harbor on south VAFB. To allow safe operation of the *Delta Mariner,* United Launch Alliance requires that the harbor undergo maintenance on a periodic basis.

(1) Delta Mariner Operations

The *Delta Mariner* is a 95.1-m (312-ft long), 25.6-m (84-ft) wide, steel-hulled, ocean-going vessel capable of operating at a 2.4-m (8-ft) draft. It is a roll-on, roll-off, self-propelled ship with an enclosed watertight cargo area, a superstructure forward, and a ramp at the vessel's stern.

The 8,000-horsepower vessel enters the harbor stern first at 1.5 to 2 knots (kts) (1.72 mi per hour (mph)) during daylight hours at high tide, approaching the wharf at less than 0.75 kts (0.86 mph). At least one tugboat will always accompany the *Delta Mariner* during visits to the VAFB harbor. The vessel's departure will occur during daylight hours at high tide approximately 10 hours after the vessel's arrival.

(2) Harbor Maintenance Dredging

United Launch Alliance must perform maintenance dredging up to four times per year, depending on the hardware delivery schedule, to accommodate the *Delta Mariner's* draft. Dredging involves the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. Expected noise levels from the dredging and other construction equipment, as well as the background noise measured at the dock area, are presented in Table 7 of this document.

TABLE 7—NOISE LEVELS OF HEAVY EQUIPMENT

Type of equipment	Range of typical noise levels (dBA) at 50 feet	Range of max. noise level (dBA) at 250 ft.
Backhoe	84–93	70–79
Water Truck (3,000 gallons)	81–84	67–70
Clamshell Dredge	75–88	61–74
Roll-off truck transporter	82–95	68–81
EPT	* 56–82	43–68
Ambient background noise at harbor	** 35–48	

* Noise level measured within 20 feet from the engine exhaust (Acentech, Inc. [Acentech] 1998).
** Noise level measured at the dock by Acentech (1998) approximately 250 feet from the beach.
Source of Noise Levels: Acentech 1998; Environmental Protection Agency (EPA) 1971.

(3) Cargo Movement Activities

Removal of the common booster core from the vessel requires the use of an elevating platform transporter (transporter). The transporter is powered by a diesel engine manufactured by Daimler-Chrysler AG (Mercedes), model OM442A, 340HP. United Launch Alliance would limit cargo unloading activities to periods of high tide. It takes approximately 2 hours to remove the first common booster core from the cargo bay and 6 hours to remove a complement of three common booster cores. It would take up to 2 additional hours to remove remaining cargo which may consist of two upper stages, one set of fairings, and one payload attach fitting (see Figure 1.3–1 in Appendix A of the application). The total of 10 hours includes time required to move the flight hardware to the staging area. United Launch Alliance packs flight hardware items, other than the common booster cores, in containers equipped with retractable casters and tow bars. United Launch Alliance would tow these containers off the vessel by a standard diesel truck tractor. Noise from the ground support equipment will be muted while inside the cargo bay and will be audible to marine mammals only during the time that the equipment is in the harbor area.

Timeframe of Delta Mariner Activities

Cargo movement operations would occur for approximately 43 days (concurrent with the harbor maintenance activities). A fully-loaded vessel can be offloaded in 10 hours; however, the *Delta Mariner* may need to leave the dock and return at another time due to tide and wind extremes that may halt the removal of cargo. Dredging-related activities normally last between 3 and 5 weeks, including set-up and tear-down activities in the water and on shore. Dredging may proceed 24 hours per day to complete the job as quickly as possible and minimize the disruptive effect on the local animals; however, dredging at VAFB has historically been conducted in the daylight. Sedimentation surveys completed since the initial dredging indicate that maintenance dredging could be required annually, or even twice per year, depending on the hardware delivery schedule. Up to 5,000 cubic yards of sediment are allowed to be removed from the harbor per year by the United States Army Corps of Engineers permit. A survey occurs several months prior to each *Delta Mariner* visit to assess whether the harbor can be safely navigated. The area to be dredged is shown in Figure 1.2–1 of Appendix A in the application.

We expect that acoustic stimuli, resulting from the proposed *Delta Mariner* activities, have the potential to incidentally harass marine mammals. We also expect these disturbances to be temporary and result in a temporary modification in behavior and/or low-level physiological effects (Level B harassment only) of certain species of marine mammals.

We do not expect that the movement of the *Delta Mariner* during the conduct of the proposed activities has the potential to harass marine mammals because of the relatively slow operation speed of the vessel (1.5 to 2 kts; 1.72 mph) during its approach to the area at high tide and the vessel's slow operational speed (0.75 kts; 0.86 mph) during its approach to the wharf.

Description of the Geographic Region of the Activities

VAFB

VAFB is composed of approximately 99,000 acres of land, and approximately 64.4 km (40 mi) of coastline on the coast of central California, within Santa Barbara County (see Figure 1 in the USAF application). Space vehicles are launched into polar orbits on azimuths from 147–201 degrees, with sub-orbital flights to 281 degrees. Missile launches are directed toward Kwajalein Atoll in

the Pacific. This over-water sector, from 147–281 degrees, comprises the Western Range. Part of the Western Range encompasses the NCI (see Figure 1 in the USAF application).

NCI

The Northern Channel Islands (NCI) are located approximately 50 km (31 mi) south of the southern point on VAFB. Three islands, San Miguel, Santa Cruz, and Santa Rosa, make up the main NCI, with San Miguel Island being the primary site for pinniped rookeries. The NCI are part of the Channel Islands National Park and the Channel Islands National Marine Sanctuary. The closest part of the NCI (Harris Point on San Miguel Island) is located more than 55 km (34 mi) south-southeast of the nearest launch facility.

VAFB Harbor

The proposed harbor maintenance and *Delta Mariner* activities will take place in or near the VAFB harbor located on the central coast of California at 34°33′ N., 120°36′ W. in the northeast Pacific Ocean. Activities related to these operations and described in Appendix A of the application will take place at VAFB harbor, located on South Base, approximately 2.3 km (1.4 mi) south of Point Arguello, CA, and approximately 1 mi (1.61 km) south of the nearest marine mammal rookery.

Description of Marine Mammals in the Area of the Specified Activity

Sections 3 and 4 of the USAF application and Sections 3 and 4 of Appendix A of the application contain detailed information on the abundance, status, and distribution of the species on VAFB and the NCI from surveys that they have conducted over the last decade and from NMFS Stock Assessment Reports (SARs). This information is summarized below and may be viewed in detail in the USAF's LOA application (see **ADDRESSES**). Additional information is available in the NMFS SARs, which are available at: *http://www.nmfs.noaa.gov/pr/sars/pdf/po2012.pdf.*

Pacific Harbor Seal

The most common marine mammal inhabiting the VAFB coastline is the Pacific harbor seal (*Phoca vitulina richardii*). Harbor seals are local to the area, rarely traveling more than 50 km (31 mi) from the haul-out site. They haul out on small offshore rocks or reefs and sandy or cobblestone cove beaches. There are 12 harbor seal haul-out sites on south VAFB. The position of these sites in relation to various SLCs is shown in Figure 2. Of these, 10 sites represent an almost continuous haul-out area which is used by the same seals (see Figure 2, inset, in USAF's application). Four sites exist on north VAFB. The position of these in relation to various SLCs and Launch Facilities (LFs; used for missile launches) is shown in Figure 3 of the application. Virtually all of the haul-out sites, both north and south, are used during low tides and are wave-washed or submerged during high tides. Additionally, the Pacific harbor seal is the only species that regularly hauls out near the VAFB harbor.

The main harbor seal haul-outs on VAFB are near Purisima Point and at Lion's Head (approximately 0.6 km [0.4 mi] south of Point Sal) on north VAFB and between the VAFB harbor north to South Rocky Point Beach on south VAFB (MSRS, 2009b). This south VAFB haul-out area is composed of several sand and cobblestone coves, rocky ledges, and offshore rocks. The Rocky Point area is used as breeding habitat; it is approximately 1.6 km (1 mi) north of the VAFB harbor (MSRS, 2009b). Harbor seals have been reported to haul out on the coast at Sudden Ranch, approximately 0.8 km (0.5 mi) south of the harbor.

The harbor seal population at VAFB has undergone an apparent decline. The primary cause of this decline has been a series of natural landslides at south VAFB, resulting in the abandonment of many haul-out sites. These slides have also resulted in extensive down-current sediment deposition, making these sites accessible to coyotes, which are now regularly seen there. Some of the displaced seals have moved to other sites at south VAFB, while others likely have moved to Point Conception, about 6.5 km (4 mi) south of the southern boundary of VAFB. Unusually high numbers of harbor seals have been reported recently at Point Conception and in the kelp beds from south VAFB to east of Point Conception (Laroche, 2012). A new haul-out site on south VAFB was discovered at Point Arguello (see Figure 2 in USAF's application). This consists of a ledge in a deep, protected crack on the north side of the point. Though not a large area, it does offer suitable haul-out for a few seals and is used occasionally.

On north VAFB, coyotes have been regularly observed at two haul-out sites. There, only rocky ledges closest to the ocean and exposed during the lowest tides are utilized by the seals, whereas before the coyotes arrived, much more of the intertidal area was used. In 2012, a new haul-out site, informally dubbed Little Sal, was discovered on north VAFB near LF–06 (see Figure 3 in USAF's application).

Pacific harbor seals frequently use haul-out sites on the following islands of the NCI: San Miguel; Santa Rosa; Santa Cruz; and Anacapa. On San Miguel Island, they occur along the north coast at Tyler Bight and from Crook Point to Cardwell Point. Additionally, they regularly breed on San Miguel Island. Harbor seals are scattered throughout Santa Rosa Island. On Santa Cruz Island, they inhabit small coves and rocky ledges along much of the coast. Harbor seals haul out on rocky ledges, caves, and cobble beaches in small numbers on Anacapa Island.

California Sea Lion

At south VAFB, California sea lions (*Zalophus californianus*) regularly haul out on north Rocky Point (Figure 2), with numbers often peaking in spring. California sea lions have been reported at Point Arguello and Point Pedernales (both on south VAFB) in the past, although none have been noted there over the past several years. In 2002, small numbers hauled out on the VAFB harbor jetty when large numbers of bait fish had moved close to shore there (MMCG and SAIC, 2012a). Individual sea lions have been noted hauled out throughout the VAFB coast; these were transient or stranded specimens. California sea lions occasionally haul out on Point Conception itself, south of VAFB. They regularly haul out on Lion Rock, north of VAFB and immediately south of Point Sal.

There are several sea lion rookeries on San Miguel Island. The primary rookeries can be found on Point Bennett; however, they also breed on Castle Rock and sometimes at Richardson Rock. Sea lions haul out at the west end of Santa Rosa Island at Ford Point and Carrington Point. A few California sea lions have been born on Santa Rosa Island, but no rookery has been established. On Santa Cruz Island, California sea lions haul out from Painted Cave almost to Fraser Point, on the west end. Fair numbers haul out at Gull Island, off the south shore near Punta Arena. Pupping appears to be increasing there. Sea lions also haul out near Potato Harbor, on the northeast end of Santa Cruz. California sea lions haul out by the hundreds on the south side of East Anacapa Island.

Northern Elephant Seal

Northern elephant seals (*Mirounga angustirostris*) sometimes haul out at VAFB. In 2004, a record count of 188 animals was made, mostly newly weaned seals (MMCG and SAIC, 2012a). Since that time, only a few elephant

seals have been reported yearly, mostly ''weaners'' and subadults, although adults have been noted occasionally. The nearest regularly used haul-out site on the mainland coast is at Point Conception. On December 14, 2012, an immature male elephant seal was observed hauled out on the sandy beach west of the breakwater at the VAFB harbor. The seal was again observed on December 15–18 and December 27. This is the first documented instance of an elephant seal hauled out at the VAFB harbor. There has been no verified breeding of northern elephant seals on VAFB.

Point Bennett on San Miguel Island is the primary northern elephant seal rookery. They also pup and breed on Santa Rosa Island, mostly on the west end. Northern elephant seals are rarely seen on Santa Cruz and Anacapa Islands.

Steller Sea Lion

In April and May of 2012, Steller sea lions (*Eumetopias jubatus*) were observed for the first time at VAFB. Up to 16 adults were noted among the California sea lions at north Rocky Point. Some individuals with distinctive scars were observed on several occasions over a several-week period, indicating that this site was being used over time rather than as a brief rest stop (MMCG and SAIC, 2012a, c). Several animals returned in February 2013 (USAF unpublished data). North Rocky Point is checked during USAF monthly marine mammal surveys, so if Steller sea lions return to this site, they will be reported. These individuals were from the eastern stock of Steller sea lions.

Steller sea lions once had two small rookeries on San Miguel Island, but these were abandoned after the 1982–1983 El Niño event. These rookeries once represented the southernmost colonies of the eastern stock of this species. Steller sea lions are not observed on the other NCI.

Northern Fur Seal

No haul-out or rookery sites exist for fur seals on the mainland coast. The only specimens that do appear on mainland beaches are stranded animals. Only one fur seal stranding has been reported at VAFB. This involved a northern fur seal that came ashore at Surf Beach. (This beach is on VAFB property but is accessible to the public.) This seal, a nine-month old male, was rescued by the Santa Barbara Marine Mammal Center on March 11, 2012 (SBMMC, 2012).

Northern fur seals have small rookeries at Point Bennett and on Castle Rock on San Miguel Island. They are not observed on the other NCI. Table 8 in this document outlines current population estimates of the five pinniped species described here on the NCI.

TABLE 8—NCI PINNIPED POPULATION ESTIMATES

Species	San Miguel Island	Santa Rosa Island	Santa Cruz Island	Anacapa Island
Pacific harbor seal	900	1,000	1,000	100.
California sea lion	32,000 pups born in 2012 [1]	500 [2]	1,200 [2]	1,000.[2]
Northern elephant seal	±10,000 pups yearly	±2,000 pups yearly	Occasional transient	Rare transient.
Steller sea lion	Rare transient	None	None	None.
Northern fur seal	9,968	None	None	None.

Sources: Carretta *et al.* 2011 and 2012; Allen and Angliss 2011 and 2012.

[1] No estimate is available for the total sea lion population on each main rookery island. Instead, pup counts are made at various breeding areas, and from this count, as estimate is made of the stock size, which includes pups, subadults and adults.

[2] Regular surveys are not conducted of these islands, and pupping is very sporadic and minimal there. These are estimates of the total number of sea lions at these islands.

Other Marine Mammals in the Proposed Action Area

There are several cetaceans that have the potential to transit in the vicinity of VAFB, including the short-beaked common dolphin (*Delphinus delphis*), the Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the gray whale (*Eschrichtius robustus*). We will not consider these species further in this proposed rule because they are typically found farther offshore of VAFB and the VAFB harbor and are unlikely or rare in the proposed action area. Guadalupe fur seals (*Arctocephalus townsendi*) are reported occasionally at San Miguel Island; and, in 1998, a pup was successfully weaned there (Melin and DeLong, 1999). However, their occurrence is rare.

California (southern) sea otters (*Enhydra lutris nereis*) are listed as threatened under the Endangered Species Act and categorized as depleted under the MMPA. The U.S. Fish and Wildlife Service manages this species, and we will not consider this species in greater detail within this proposed rule. The proposed rule will only address requested take authorizations for pinnipeds. The USAF launch, aircraft, and helicopter operations have the potential to take Pacific harbor seals, California sea lions, northern elephant seals, Steller sea lions, and northern fur seals by Level B harassment. The harbor activities related to the launch vehicles at VAFB have the potential to take four of the same species (all but northern fur seals, which are not found in the vicinity of the VAFB harbor) by Level B harassment.

Potential Effects of Specified Activities on Marine Mammals

The activities proposed for taking of marine mammals under these regulations have the potential to cause harassment through both acoustic and visual stimuli. The USAF launch and aircraft activities create two types of noise: Continuous (but short-duration) noise, due mostly to combustion effects of aircraft and launch vehicles; and impulsive noise, due to sonic boom effects. Launch operations are the major source of noise on the marine environment from VAFB. The operation of launch vehicle engines produces significant sound levels. Generally, noise is generated from four sources during launches: (1) Combustion noise from launch vehicle chambers; (2) jet noise generated by the interaction of the exhaust jet and the atmosphere; (3) combustion noise from the post-burning of combustion products; and (4) sonic booms. Launch noise levels are highly dependent on the type of first-stage booster and the fuel used to propel the vehicle. Therefore, there is a great similarity in launch noise production within each class size of launch vehicles. The noise generated by VAFB activities will result in the incidental harassment of pinnipeds, both behaviorally and in terms of physiological (auditory) impacts.

Acoustic and visual stimuli generated by the use of heavy equipment during the *Delta Mariner* off-loading operations and harbor dredging and the increased presence of personnel may have the

potential to cause Level B harassment of any pinnipeds hauled out in the VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities.

The noise and visual disturbances from SLV and missile launches, aircraft and helicopter operations, and harbor maintenance activities may cause the animals to lift their heads, move towards the water, or enter the water. The following information provides background on marine mammal responses to launch noise and harbor maintenance activities that has been gathered under previous LOAs and Incidental Harassment Authorizations for these activities, as well as a scientific research permit issued to VAFB by NMFS for a research program (Permit No. 859–1680–01, expired January 1, 2009, and Permit No. 14197, expires June 30, 2014) to determine the short and long-term effects of SLV noise and sonic booms on affected marine mammals.

Marine Mammal Response to Launch Noise and Sonic Booms

Seals may leave the haul-out site and enter the water due to the noise created by launch vehicles during launch operations. The percentage of seals leaving the haul-out increases with noise level up to approximately 100 dB ASEL, after which almost all seals leave, although data have shown that some percentage of seals have remained on shore during launches. Time-lapse video photography during four launch events revealed that the seals that reacted to the launch noise but did not leave the haul-out were all adults. Because adult seals reacted less strongly than other younger seals, this suggests that adults had possibly experienced other launch disturbances and had habituated to them. When launches occur during high tides at VAFB, impacts likely do not occur because the haul-out sites are submerged (i.e., pinnipeds are not hauled out; MMCG and SAIC, 2012a).

The louder the launch noise, the longer it took for seals to begin returning to the haul-out site and for the numbers to return to pre-launch levels. Seals may begin to return to the haul-out site within 2–55 min of the launch disturbance, and the haul-out site usually returned to pre-launch levels within 45–120 min. In two past Athena IKONOS launches with ASELs of 107.3 and 107.8 dB at the closest haul-out site, seals began to haul-out again approximately 16–55 min post-launch (Thorson *et al.,* 1999a; 1999b). In contrast, noise levels from an Atlas launch and several Titan II launches had ASELs ranging from 86.7 to 95.7 dB at the closest haul-out, and seals began to return to the haul-out site within 2–8 min post-launch (Thorson and Francine, 1997; Thorson *et al.,* 2000).

The main concern on the NCI from VAFB launch activities is potential impacts from sonic booms created during launches of SLVs from VAFB. During the period of 1997 through 2005, and in 2007, there were no sonic booms above 2 psf recorded on the NCI. Small sonic booms between 1 and 2 psf usually elicit a heads up response or slow movement toward and entering the water, particularly for pups. In 2006, due to an equipment malfunction, there was uncertainty about the peak overpressure from the Delta IV NROL–22 launch, which could have ranged between 0.77 and 3.36 psf. During the 1996 Titan IV K–22 launch, sonic booms of 1 to 9.2 psf reached San Miguel Island and caused many sea lions and some elephant seals to enter the water near the loudest sonic boom (Stewart *et al.,* 1996). There were no injuries or mortalities as a result of that sonic boom or the reactions by pinnipeds on San Miguel Island. The most recent launch to produce a sonic boom of greater than 2 psf at San Miguel Island with simultaneous pinniped observations occurred on September 13, 2012 (sonic boom of 2.1 psf). No reactions were noted in the California sea lions and northern elephant seals present, and 20 of 36 harbor seals present entered the water (MMCG and SAIC, 2013). Table 9 summarizes monitoring efforts at San Miguel Island during which acoustic measurements were successfully recorded simultaneously with observations of the animals' reactions to the booms.

TABLE 9—SONIC BOOMS AND PINNIPED REACTIONS AT SAN MIGUEL ISLAND

Launch date	Vehicle	psf	(dB re 20 μPa)	Reaction	Location
7 Nov 91	Titan IV	[1] 1.2 & 1.8	[1] 129.5–133.0	Z.c. Heads-up M.a. None	Pt. Bennett.
12 May 96	Titan IV	[2] 8.92	[2] 146.6	P.v. All 5 into water M.a. 60 of 67 heads-up	Crook Pt.
27 Apr 99	Athena II	1.0	127.2	Z.c. 866 alerted; 232 into water M.a. & C.u. Alerted but no other response	Adam's Cove.
24 Sep 99	Athena II	0.95	127.2	Z.c. 12 of 600 into water M.a. & C.u. Alerted; otherwise no response	Pt. Bennett.
20 Nov 00	Delta II	0.4	119.6	Z.c. 60 pups into water; no reaction from focal group. M.a. No reaction	Pt. Bennett.
8 Sep 01	Atlas II	[1] 0.75 & 0.35	[1] 125.1 & 118.6	Z.c. Group 1: 1200-no reaction Z.c. Group 2: 247-no reaction M.a. 25–37-no reaction P.v. 2 of 4 into water	Cardwell Pt.
11 Feb 02	Delta II	[1] 0.47 & 0.64	[1] 121.08 & 123.08	Z.c. & C.u. 485 in 3 groups-no reaction M.a. 424 in 2 groups-no reaction	Pt. Bennett.
2 Dec 03	Atlas II	0.88	126.4	Z.c. Number unknown (night launch); 4 moved toward water, 40% heads-up. M.a. No reaction	Pt. Bennett.
15 Jul 04	Delta II	[1] 0.79 & 1.34	[1] 125.5 & 130.12	Z.c. Number unknown (night launch); 10% heads-up.	Adam's Cove.
13 Mar 08	Atlas V	1.24	129.4	M.a. No reaction from 109 pups	Cardwell Pt.
5 May 09	Delta II	0.76	125.2	Z.c. 784 animals-no reaction	West of Judith Rock.
14 Apr 11	Atlas V	1.01	110.0	M.a. 445-no reaction (night launch)	Cuyler Harbor.

TABLE 9—SONIC BOOMS AND PINNIPED REACTIONS AT SAN MIGUEL ISLAND—Continued

Launch date	Vehicle	psf	(dB re 20 μPa)	Reaction	Location
13 Sep 12	Atlas V	2.10	122.8	Z.c. 460-no reaction ..... M.a. 68-no reaction P.v. 20 of 36 into water	Cardwell Pt.

Sources: MMCG and SAIC 2012a and 2012c.
Abbreviations:
Psf = Pounds per square foot (maximum overpressures of sonic booms); dB re 20 μPa = Decibels referenced to 20 micropascals (peak airborne intensities of sonic booms); Z.c. = *Zalophus californianus,* the California sea lion; M.a. = *Mirounga angustirostris,* the northern elephant seal; C.u. = *Callorhinus ursinus,* the northern fur seal; P.v. = *Phoca vitulina richardsi,* the Pacific harbor seal.
1. When two acoustic measurements are presented, they represent a double sonic boom.
2. This was a rare, focused sonic boom.

At the Channel Islands, California sea lions react more strongly to sonic booms than most other species. Pups sometimes react more than adults, either because they are more easily frightened or because their hearing is more acute. Harbor seals also appear to be more sensitive to sonic booms than most other pinnipeds, often resulting in startling and fleeing into the water. Northern fur seals generally show little or no reaction. Northern elephant seals generally exhibit no reaction at all, except perhaps a heads-up response or some stirring, especially if sea lions in the same area mingled with the elephant seals react strongly to the boom. Post-launch monitoring generally reveals a return to normal patterns within minutes up to an hour or two of each launch, regardless of species.

Table 9 in this document shows that little or no reaction from the four species usually occurred when overpressures were below 1 psf. In general, elephant seals did not react unless other animals around them reacted strongly or if the sonic boom was extremely loud. Northern fur seals seemed to react similarly. From limited data about the reactions of harbor seals, it appears likely that they were quite sensitive to sonic booms (MMCG and SAIC, 2012a, c). Their reactions to launch noise at VAFB seem to suggest a sensitivity to low frequency sounds as well. No evidence has been presented of abnormal behavior as a result of the launches, nor were any injuries or mortalities attributed to any launches. No pups were abandoned as a result of sonic booms. These findings came as a result of more than two decades of research by numerous qualified, independent researchers, from March 1991 through September 2012 (MMCG and SAIC, 2012a, c). These patterns are anticipated to continue. Based on the information presented here and in the USAF application, the USAF is proposing to alter the requirements for monitoring when a sonic boom is predicted over the NCI. As noted in the ''Proposed Monitoring and Reporting'' section found later in this document, the USAF proposes a decrease (perhaps with seasonal variables) in the monitoring requirement to only monitor sonic booms predicted to be greater than 1.5 psf between March and September or above 2 psf at other times of the year. NMFS concurs that such a change to past monitoring protocols is warranted based on data presented here and in past monitoring reports, and this change is presented in the proposed monitoring section later in this document.

Auditory Brainstem Response (ABR) Tests

To determine if harbor seals experience changes in their hearing sensitivity as a result of launch noise, ABR testing was conducted on 21 harbor seals for four Titan IV launches, one Taurus launch, and two Delta IV launches by the USAF in accordance with issued Scientific Research permits.

Following standard ABR testing protocol, the ABR was measured from one ear of each seal using sterile, sub-dermal, stainless steel electrodes. A conventional electrode array was used, and low-level white noise was presented to the non-tested ear to reduce any electrical potentials generated by the non-tested ear. A computer was used to produce the click and an 8 kilohertz (kHz) tone burst stimuli, through standard audiometric headphones. Over 1,000 ABR waveforms were collected and averaged per trial. Initially the stimuli were presented at sound pressure levels (SPL) loud enough to obtain a clean reliable waveform, and then decreased in 10 dB steps until the response was no longer reliably observed. Once response was no longer reliably observed, the stimuli were then increased in 10 dB steps to the original SPL. By obtaining two ABR waveforms at each SPL, it was possible to quantify the variability in the measurements.

Good replicable responses were measured from most of the seals, with waveforms following the expected pattern of an increase in latency and decrease in amplitude of the peaks, as the stimulus level was lowered. One seal had substantial decreased acuity to the 8 kHz tone-burst stimuli prior to the launch. The cause of this hearing loss was unknown but was most likely congenital or from infection. Another seal had a great deal of variability in waveform latencies in response to identical stimuli. This animal moved repeatedly during testing, which may have reduced the sensitivity of the ABR testing on this animal for both the click and 8 kHz tone burst stimuli. Two of the seals were released after pre-launch testing but prior to the launch of the Titan IV B–34, as the launch was delayed for many days, and five days is the maximum duration permitted to hold the seals for testing.

Detailed analysis of the changes in waveform latency and waveform replication of the ABR measurements for the 14 seals showed no detectable changes in the seals' hearing sensitivity as a result of exposure to the launch noise. The delayed start (1.75 to 3.5 hr after the launches) for ABR testing allows for the possibility that the seals may have recovered from a temporary threshold shift (TTS) before testing began. However, it can be said with confidence that the post-launch tested animals did not have permanent hearing changes due to exposure to the launch noise from the Titan IV, Taurus, or Delta IV SLVs. These results are consistent with previous NMFS conclusions for such activities in its prior rulemakings (63 FR 39055, July 21, 1998; 69 FR 5720, February 6, 2004; 74 FR 6236, February 6, 2009).

NMFS also notes that stress from long-term cumulative sound exposures can result in physiological effects on reproduction, metabolism, and general health, or on the animals' resistance to disease. However, this is not likely to occur as a result of the activities from VAFB because of the infrequent nature and short duration of the noise,

including the occasional sonic boom. Research indicates that population levels at these haul-out sites have remained constant in recent years, with decreases only noted in some areas because of the increased presence of coyotes (a known predator), giving support to this conclusion.

Marine Mammal Responses to Harbor Activities

As noted in the analysis of potential responses to launch noise and sonic booms, pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a ''looming'' visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens *et al.,* 1988). The onset of operations by a loud sound source, such as the transporter during common booster core off-loading procedures, may elicit such a reaction. In addition, the movements of cranes and dredges may represent a ''looming'' visual stimulus to seals hauled out in close proximity. Seals and sea lions exposed to such acoustic and visual stimuli may either exhibit a startle response and/or leave the haul-out site or may exhibit no reaction at all.

Summary of Marine Mammal Impacts From Launches

In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering (i.e., Level B harassment) and would not cause injury or mortality to marine mammals. On the other hand, startle and alert reactions accompanied by large-scale movements, such as stampedes into the water of hundreds of animals, may rise to the degree of Level A harassment because they could result in injury of individuals. In addition, such large-scale movements by dense aggregations of marine mammals or at pupping sites could potentially lead to takes by injury or death. However, there is no potential for large-scale movements leading to serious injury or mortality near the south VAFB harbor because, historically, the number of harbor seals hauled out near the site is less than 30 individuals, and there is no pupping at nearby sites. The effects of the harbor activities are expected to be limited to short-term startle responses and localized behavioral changes. Additionally, the USAF does not anticipate a significant impact on any of the species or stocks of marine mammals from launches from VAFB. For even the largest launch vehicles, such as Delta IV, the launch noises and sonic booms can be expected to cause a startle response and flight to water for those harbor seals, California sea lions and other pinnipeds that are hauled out on the coastline of VAFB and on the NCI. The noise may cause TTS in hearing depending on exposure levels, but no PTS is anticipated. Because aircraft will fly at altitudes greater than 305 m (1,000 ft) around pinniped haul-outs and rookeries, animals are not anticipated to react to aircraft and helicopter overflights.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'' sections) which, as noted, should effect the least practicable adverse impact on affected marine mammal species and stocks.

Previous Activities and Monitoring

USAF Launches and Aircraft and Helicopter Operations

As noted in Table 1 earlier in this document, the USAF did not exceed its authorized 50 launches per year in any given year. The USAF has complied with the mitigation and monitoring that we required under the previous annual LOAs for the February 2009 through February 2014 period. In compliance with each LOA, they have submitted a final report on the launches and aircraft and helicopter activities covering each annual period. Each LOA required them to conduct: (1) Visual monitoring of pinniped haul-out sites at least 72 hours prior to any launch scheduled during the harbor seal pupping season and continue for at least 48 hours after the launch with follow-up visual surveys conducted 2 weeks after the launch; (2) visual monitoring on the NCI if a sonic boom of greater than 1 psf is predicted; (3) acoustic measurements of launch vehicles for which acoustic measurements have not been previously made; and (4) supplement daytime visual monitoring with time-lapse video recordings. These surveys were conducted to note the number of animals present prior to, during, and after launches.

Results of the monitoring efforts have been summarized in all of the previous annual LOA renewal notices (75 FR 5056, February 1, 2010; 76 FR 6448, February 4, 2011; 77 FR 6086, February 7, 2012; 78 FR 8111, February 5, 2013). Observed responses were similar to those described earlier in this document. Harbor seals appeared to be the most responsive pinniped species observed during monitoring surveys. Most common reactions were head lifts and minor movements on the beach, with some flushing into the water (mostly by harbor seals). For a complete record of all observations, we refer the reader to the USAF's monitoring reports at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

None of the monitoring revealed injuries, mortalities, or abnormal behaviors by pinnipeds at any of the monitored haul-out sites as a result of the authorized activities. The USAF complied with the requirements of the annual LOAs, and NMFS has determined that the marine mammal take resulting from the February 2009–October 2013 launches is within that analyzed in and anticipated by the associated regulations.

Harbor Activities Related to Launch Vehicles

United Launch Alliance, the USAF contractor responsible for conducting the harbor activities related to the Delta IV/EELV, has complied with the mitigation and monitoring that we required under the previous Authorizations for the 2009, 2010, 2011, and 2012 seasons. In compliance with each Authorization, they have submitted a final report on the activities at the VAFB harbor covering each annual period. Each Incidental Harassment Authorization required them to conduct baseline observations of pinnipeds in the project area prior to initiating project activities; conduct and record observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are 0.6 m (2 ft) or less (i.e., low enough for pinnipeds to haul-out); and conduct post-construction observations of pinniped haul-outs in the project area to determine whether animals possibly disturbed by the project's activities would return to the haul-out area.

During the 2009 season (July 8—September 21), United Launch Alliance conducted 21 days of operations, which did not exceed the activity levels analyzed under the 2009 Authorization. The observers noted that Pacific harbor seals hauled out in the vicinity were

more responsive to visual disturbances than to auditory disturbances. They reported that the maximum number of harbor seals hauled out ranged from zero to 28 animals with most using the rocks approximately 164.9 to 173.7 m (540 to 570 ft) south of the harbor area. The maximum number of sea lions present ranged from zero to two animals with both hauled out at either the breakwater and or on a beach southwest of the dock area. United Launch Alliance did not observe any reactions of the harbor seals during equipment start-up. However, the observers noted that in some instances, the harbor seals slowly flushed when they could see equipment moving from their vantage point in the haul-out area. During the course of the 2009 season, harbor seals showed head alerts on 15 occasions and slowly entered the water on 24 occasions. Only one California sea lion showed a head alert during the entire operational season.

For the 2010 season (June 2–18), United Launch Alliance conducted 7 days of operations, which did not exceed the activity levels that we analyzed under the 2010 Authorization. They reported that the maximum number of harbor seals hauled out ranged from zero to 14 animals. Similar to the previous year, the harbor seals hauled out on the rocks south of the harbor area. The maximum number of sea lions present ranged from zero to two animals.

During the course of the 2010 season, harbor seals showed a head alert on only one occasion and entered the water on two occasions. In the first instance, the harbor seal resettled within 1 minute after the head alert. In the second instance, both harbor seals returned to the haul-out within 3 minutes. The observers routinely observed pinnipeds in the water within and around the harbor for the duration of project activities. They report that they did not observe any altered behavior while the animals were in the water due to activities occurring on the dock or in the harbor.

During the 2011 season (July 22–August 18; October 24–November 7), they conducted a total of 19 days of operations which did not exceed the activity levels analyzed under the 2011 Authorization. They reported that the maximum number of harbor seals hauled out ranged from zero to 38 animals and the maximum number of sea lions present ranged from zero to one animal.

During the course of the 2011 season, harbor seals showed a head alert on 23 occasions and slowly entered the water on 19 occasions. Again, the observers routinely observed pinnipeds rafting in the water within and around the harbor for the duration of project activities.

During the 2012 season (December 15–16), they conducted a total of 2 days of operations, which did not exceed the activity levels analyzed under the 2012 Authorization. They reported that the maximum number of harbor seals hauled out ranged from zero to 54 animals and the maximum number of sea lions present ranged from zero to one animal.

During the course of the 2012 season, no reactions to disturbances associated with *Delta Mariner* operations were observed in any of the animals during any of the monitoring periods. On December 14, 2012, an immature male elephant seal was observed hauled out on the sandy beach west of the breakwater at the VAFB Harbor. The seal was again observed on December 15, December 16, December 17, December 18, and December 27. This is the first documented instance of an elephant seal hauled out at this location. For a complete record of all observations, we refer the reader to United Launch Alliance's monitoring reports at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

Based on the results from the previous monitoring reports, we conclude that these results support our original findings that the mitigation measures set forth in the 2009, 2010, 2011, and 2012. Authorizations effected the least practicable adverse impact on the species or stocks.

During periods of low tide (e.g., when tides are 2 ft (0.61 m) or less and low enough for pinnipeds to haul-out), we would expect the pinnipeds to return to the haulout site within 60 minutes of a disturbance (Allen *et al.,* 1985). The effects to pinnipeds appear at the most to displace the animals temporarily from their haul out sites and we do not expect that the pinnipeds would permanently abandon a haul-out site during the conduct of harbor maintenance and *Delta Mariner* operations. Finally, no operations would occur near pinniped rookeries; therefore, we do not expect mother and pup separation or crushing of pups to occur.

Anticipated Effects on Marine Mammal Habitat

Impacts on marine mammal habitat are part of the consideration in making a finding of negligible impact on the species and stocks of marine mammals. Habitat includes rookeries, mating grounds, feeding areas, and areas of similar significance. We do not anticipate that the proposed operations would result in any temporary or permanent effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (i.e. fish and invertebrates). While it is anticipated that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and reversible and was considered in further detail earlier in this document, as behavioral modification. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(A) of the MMPA, NMFS must, where applicable, 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 subsistence uses (where relevant). The NDAA of 2004 amended the MMPA as it relates to military-readiness activities and the ITA process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' The training activities described in the USAF application are considered military readiness activities.

Section 11 of the USAF application and Section 11 of Appendix A in the application contain descriptions of the mitigation measures proposed to be implemented during the specified activities in order to effect the least practicable adverse impact on the affected marine mammal species and stocks and their habitats. Please refer to the application (see **ADDRESSES**) for the full description.

Proposed Measures During Launches and Aircraft and Helicopter Operations

All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting) which may require approaching pinniped haul-outs and rookeries closer than 1,000 ft (305 m). For missile and rocket launches, unless

constrained by other factors including human safety, national security concerns or launch trajectories, holders of LOAs must schedule launches to avoid, whenever possible, launches during the harbor seal pupping season of March through June. The USAF must avoid, whenever possible, launches which are predicted to produce a sonic boom on the NCI during harbor seal, elephant seal, California sea lion, and northern fur seal pupping seasons.

If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and appropriate changes must be made through modification to an LOA, prior to conducting the next launch of the same vehicle under that LOA.

Proposed Measures During Harbor Activities

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities, United Launch Alliance/and or its designees propose to implement the following mitigating measures for marine mammals:

(1) If activities occur during nighttime hours, United Launch Alliance will turn on lighting equipment before dusk. The lights would remain on for the entire night to avoid startling pinnipeds.

(2) Initiate operations before dusk.

(3) Keep construction noises at a constant level (i.e., not interrupted by periods of quiet in excess of 30 minutes) while pinnipeds are present.

(4) If activities cease for longer than 30 minutes and pinnipeds are in the area, United Launch Alliance would initiate a gradual start-up of activities to ensure a gradual increase in noise levels.

(5) A qualified observer would visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of United Launch Alliance's activities (see Proposed Monitoring).

(6) The *Delta Mariner* and accompanying vessels would enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks; reducing speed to 1.5 to 2 knots (1.5–2 nm/hr; 2.8–3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel would enter the harbor stern first, approaching the wharf and moorings at less than 0.75 knot (1.4 km/hr).

(7) As United Launch Alliance explores alternate dredge methods, the dredge contractor may introduce quieter techniques and equipment.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The proposed rule comment period will afford the public an opportunity to submit recommendations, views, and/or concerns regarding this action and the proposed mitigation measures. While NMFS has determined preliminarily that the proposed mitigation measures presented in this document will effect the least practicable adverse impact on the affected species or stocks and their habitat, NMFS will consider all public comments to help inform our final decision. Consequently, the proposed mitigation measures may be refined, modified, removed, or added to prior to the issuance of the final rule based on public comments received, and where appropriate, further analysis of any additional mitigation measures.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that we must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The Act's implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for an authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and our expectations of the level of taking or impacts on populations of marine mammals present in the action area.

As part of its application, the USAF provided a monitoring plan, similar to that in the current regulations (50 CFR 216.125) and previous Incidental Harassment Authorizations issued to United Launch Alliance, for assessing impacts to marine mammals from rocket and missile launches at VAFB and *Delta Mariner* operations. This monitoring plan is described, in detail, in Section 8 of the main portion of the application for launch monitoring activities and Section 13 of Appendix A of the application for *Delta Mariner* operations monitoring activities. The following monitoring is proposed to be conducted under these regulations. The proposed monitoring program may be modified or supplemented based on comments or new information received from the public during the public comment period.

The monitoring will be conducted by a NMFS-approved marine mammal biologist experienced in surveying large numbers of marine mammals.

Monitoring for Launches on VAFB

Monitoring at the haul-out site closest to the launch facility will commence at least 72 hours prior to the launch and continue until at least 48 hours after the launch. Biological monitoring at VAFB will be conducted for all launches during the harbor seal pupping season, 1 March to 30 June. Acoustic and biological monitoring will be conducted on new space and missile launch vehicles during at least the first launch, whether it occurs within the pupping season or not.

Monitoring will include multiple surveys each day that record, when possible, the species, number of animals, general behavior, presence of pups, age class, gender, and reaction to launch noise, sonic booms, or other natural or human-caused disturbances. Environmental conditions such as tide, wind speed, air temperature, and swell will also be recorded. Time-lapse photography or video will be used during daylight launches to document the behavior of mother-pup pairs during launch activities. For launches during the harbor seal pupping season (March through June), follow-up surveys will be made within 2 weeks of the launch to

ensure that there were no adverse effects on any marine mammals. A report detailing the species, number of animals observed, behavior, reaction to the launch noise, time to return to the haul-out site, any adverse behavior and environmental conditions will be submitted to NMFS within 90 days of the launch.

Monitoring for the NCI

Monitoring will be conducted on the NCI (San Miguel, Santa Cruz, and Santa Rosa Islands) whenever a sonic boom over 1 psf is predicted (using the most current sonic boom modeling programs) to impact one of the islands between March 1 and June 30, over 1.5 psf between July 1 and September 30, and over 2 psf between October 1 and February 28. Monitoring will be conducted at the haul-out site closest to the predicted sonic boom impact area. Monitoring will be conducted by a NMFS-approved marine mammal biologist experienced in surveying large numbers of marine mammals. Monitoring will commence at least 72 hours prior to the launch and continue until at least 48 hours after the launch (if a sonic boom was detected during the actual launch).

Sonic boom prediction modeling is not conducted prior to missile launches because of their trajectories, which do not have the potential to overfly and/or impact with sonic booms the NCI. Launches from the following sites would not overfly the NCI: Space Launch Complexes 2, 3, 6, and 8; Launch Facility 576–E, Test pad 01; and missile launch facilities 4, 9, 10, 23, and 24.

Monitoring will include multiple surveys each day that record the species, number of animals, general behavior, presence of pups, age class, gender, and reaction to launch noise, sonic booms, or other natural or human-caused disturbances. Environmental conditions such as tide, wind speed, air temperature, and swell will also be recorded. Due to the large numbers of pinnipeds found on some beaches of San Miguel Island, smaller focal groups should be monitored in detail rather than the entire beach population. A general estimate of the entire beach population should be made once a day and their reaction to the launch noise noted. Photography or video will be used during daylight launches to document the behavior of mother-pup pairs or dependent pups during launch activities. During the pupping season of any species affected by a launch, follow-up surveys will be made within 2 weeks of the launch to ensure that there were no adverse effects on any marine mammals. A report detailing the species, number of animals observed, behavior, reaction to the launch noise, time to return to the haul-out site, any adverse behavior and environmental conditions will be submitted to NMFS within 90 days of the launch.

Harbor Activities

United Launch Alliance will designate a qualified, and biologically trained observer to monitor the area for pinnipeds during all harbor activities. During nighttime activities, United Launch Alliance will illuminate the harbor area and the observer will use a night vision scope. Monitoring activities will consist of the following:

(1) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities.

(2) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are low enough (less than or equal to 2 ft (0.61 m) for pinnipeds to haul out.

(3) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

Proposed Reporting Measures

A report containing the following information must be submitted to NMFS within 90 days after each launch: (1) Date(s) and time(s) of each launch; (2) date(s), location(s), and preliminary findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations; and (3) results of the monitoring programs, including but not necessarily limited to (a) numbers of pinnipeds present on the haul-out prior to commencement of the launch, (b) numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise, (c) the length of time(s) pinnipeds remained off the haul-out or rookery, (d) the numbers of pinniped adults or pups that may have been injured or killed as a result of the launch, and (4) any behavioral modifications by pinnipeds that likely were the result of launch noise or the sonic boom.

If a freshly dead or seriously injured pinniped is found during post-launch monitoring, the incident must be reported within 48 hours to the NMFS Office of Protected Resources and the NMFS West Coast Regional Office.

An annual report must be submitted to NMFS on March 1 of each year. The first report will cover the time period from issuance of the LOA through February 28, 2015. Each annual report after that time will cover the time period from March 1 through February 28. Information in the annual reports will describe any incidental takings under an LOA not reported in the 90-day launch reports, such as the aircraft test program and helicopter operations and any assessments made of their impacts on hauled-out pinnipeds, summarize the information from the 90-day launch reports, and describe the information collected during monitoring of *Delta Mariner* operations. Information related to *Delta Mariner* operations that must be included in the annual report include: (1) Date, time, and duration of activity; (2) weather; (3) tide status; (4) composition (species, gender, and age class) and locations of haul-out group(s); (5) horizontal visibility; and (6) and results of the monitoring program, which include (i) number and species of pinnipeds present on haul-out(s) prior to start of activity and behavioral patterns, (ii) number and species of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of noise related to the activity, (iii) brief description of any activity/action that causes animal(s) to flush, (iv) length of time pinnipeds remained off the haul-out or rookery, and (v) noted behavioral modifications by pinnipeds that were likely the result of the activity in the harbor.

A final report must be submitted to NMFS no later than 180 days prior to expiration of these regulations. This report must summarize the findings made in all previous reports and assess both the impacts at each of the major rookeries and the cumulative impact on pinnipeds and any other marine mammals from the specified activities.

Numbers of Marine Mammals Estimated To Be Taken by Harassment

The marine mammal species NMFS believes likely to be taken by Level B harassment incidental to launch and aircraft and helicopter operations at VAFB are harbor seals, California sea lions, northern elephant seals, northern fur seals, and Steller sea lions. NMFS believes that all of these species except for northern fur seals are likely to be taken by Level B harassment incidental to *Delta Mariner* operations at the VAFB harbor. All of these species are protected under the MMPA, and none are listed under the Endangered Species Act (ESA). On November 4, 2013, NMFS published a final rule delisting the eastern distinct population segment (DPS) of Steller sea lions (78 FR 66139). We have determined that this DPS has recovered and no longer meets the

definition of an endangered or threatened species under the Endangered Species Act. The Steller sea lions at VAFB are part of the eastern DPS. Numbers of animals that may be taken by Level B harassment are expected to vary due to factors such as type of SLV, location of the sonic boom, weather conditions (which can influence the size of the sonic boom), the time of day, and the time of year, as well as launch trajectory. For this reason, ranges are given for the harassment estimates of marine mammals. Aircraft operations will occur frequently but will avoid pinniped haul-out areas and are unlikely to disturb pinnipeds.

As noted earlier, sightings of Guadalupe fur seals have been extremely rare the last few decades at VAFB and on the NCI. Therefore, no takes by harassment are anticipated for this species incidental to the proposed activities.

Take estimates at VAFB and the NCI from launches are based on decades of visual observations and systematic marine mammal surveys conducted at the launch sites and known pinniped haul-outs on VAFB and the NCI. Surveys are conducted by VAFB marine mammal monitors, as well as National Park Service employees. Take estimates at the VAFB harbor are based on visual observations conducted there since 2001 by marine mammal monitors noting observations during *Delta Mariner* operations.

Estimated Takes at VAFB

The following text describes the potential range of takes possible of pinnipeds on VAFB during launches. Table 10 provides this information in outline form.

Harbor seals: As many as 400 harbor seals per launch may be taken. Depending on the type of rocket being launched, the time of day, time of the year, weather conditions, tide and swell conditions, the number of seals that may be taken will range between 0 and 400. Launches and aircraft operations may occur at any time of the year, so any age classes and gender may be taken.

California sea lions: As many as 300 sea lions per launch may be taken. Sea lions at VAFB are usually juveniles of both sexes and sub-adult males that haul out in the fall during the post breeding dispersal. Births generally do not occur at VAFB, but five pups were observed at VAFB in 2003, an El Nino year, although all were abandoned by their mothers and died within several days of birth. Sick or emaciated weaned pups may also haul out briefly.

Northern elephant seals: As many as 100 elephant seals per launch may be taken. Weaned elephant seal pups, juveniles, or young adults of both sexes, may occasionally haul out at VAFB for several days to rest or as long as 30 days to molt. Injured or sick seals may also haul out briefly.

Steller sea lions: Steller sea lions have only been noted at VAFB in April and May of 2012 and again from February–April 2013. Numbers were small. As many as 36 Steller sea lions may be taken per launch.

Northern fur seals: There are no reports of northern fur seals at VAFB. Therefore, it is unlikely that any fur seals will be taken.

TABLE 10—PREDICTED LEVEL B HARASSMENT TAKES OF PINNIPEDS ON VAFB ON A PER LAUNCH BASIS

Species	Age groups	Sex	Reproductive condition	Takes per launch from noise or visual disturbance	Takes from aircraft operations
Pacific harbor seal	All	Both	Pupping and breeding March through June	0–400	None.
California sea lion	All	Both	Pupping and breeding June through July, but no pupping expected at VAFB.	0–300	None.
Northern elephant seal.	All	Both	No pregnant or breeding animals expected; mostly "weaners".	0–100	None.
Steller sea lion	All	Both	No pupping or breeding at VAFB	0–36	None.
Northern fur seal	Mostly juveniles	Both	Only stranded animals	None	None.

Estimated Takes on the NCI

Sonic booms created by SLVs may impact marine mammals on the NCI, particularly San Miguel Island. Missile launches utilize westward trajectories so do not cause sonic boom impacts to the NCI. Sonic boom modeling software will continue to be used to predict the area of sonic boom impact and magnitude of the sonic boom on the NCI based on the launch vehicle, speed, trajectory, and meteorological conditions. Prior to each SLV launch, a predictive sonic boom map of the impact area and magnitude of the sonic boom will be generated. Based on previous monitoring of sonic booms created by SLVs on San Miguel (Thorson *et al.,* 1999a: 1999b), it is estimated that as much as approximately 25 percent of the marine mammals may be disturbed on SMI (Thorson *et al.,* 1999a; 1999b). Most sonic booms that reach San Miguel Island are small (<1 psf), although larger sonic booms are possible but rarely occur. A conservative take estimate of as much as 25 percent of the animals present is used for each species per launch. Table 11 presents the potential numbers of takes per launch event on the NCI.

TABLE 11—PREDICTED LEVEL B HARASSMENT TAKES ON THE NCI ON A PER LAUNCH BASIS

Species	Age groups	Sex	Reproductive condition	Takes per launch from sonic booms
Pacific harbor seal	All	Both	Pupping and breeding March through June.	0–200.
California sea lion	All	Both	Pupping and breeding June through July.	0–6,000 pups, 0–3,000 juveniles and adults.
Northern elephant seal.	All	Both	Pupping December through March	0–500 pups, 1,000 juveniles and adults.
Steller sea lion	Adult	Both	No pupping or breeding at NCI	None; virtually no presence on San Miguel.

TABLE 11—PREDICTED LEVEL B HARASSMENT TAKES ON THE NCI ON A PER LAUNCH BASIS—Continued

Species	Age groups	Sex	Reproductive condition	Takes per launch from sonic booms
Northern fur seal ...	Mostly juveniles	Both	Pupping and breeding in June and July	0–250 pups, 0–1,000 juveniles and adults.

Estimated Takes From Delta Mariner Operations

Estimates of the numbers of marine mammals that might be affected are based on consideration of the number of animals that could be disturbed appreciably by approximately 43 days for Pacific harbor seals and California sea lions, 8 days for northern elephant seals, and 3 days for Steller sea lions. The lower number of days for northern elephant seals and Steller sea lions are based on the fact that those species haul-out in fewer numbers and fewer times throughout the year at the VAFB harbor than harbor seals or California sea lions.

Based on previous monitoring reports, with the same activities conducted in the proposed operations area, we estimate that approximately 1,161 Pacific harbor seals, 129 California sea lions, 24 northern elephant seals, and 24 Steller sea lions could be potentially affected by Level B behavioral harassment over the course of each year of activities. We base these estimates on historical pinniped survey counts from 2001 to 2011, and calculated takes by multiplying the average of the maximum abundance by the number of days noted above (i.e., the total number of operational days). Thus, the USAF requests authorization to incidentally harass approximately 1,161 Pacific harbor seals (27 animals by 43 days), 129 California sea lions (3 animals by 43 days), 24 northern elephant seals (3 animals by 8 days), and 24 Steller sea lions (8 animals by 3 days).

Table 12 presents the maximum number of potential takes on an annual basis. However, actual takes could be lower than this number. The range of animals that could be taken is based on zero animals responding up to the maximum for each launch event plus *Delta Mariner* operations. Although not anticipated between 2014 and early 2019, up to 50 launches are authorized for taking of marine mammals. However, as noted in Table 2 earlier in this document, no more than 12–19 launches are actually anticipated during this time frame. Additionally, not all launches will overfly the NCI. However, the numbers presented in Table 12 represent the maximum end of the range and assume that all 50 launches would overfly the NCI. Therefore, actual takes will likely be much lower than the maximum estimate.

TABLE 12—TOTAL NUMBER OF ANNUAL LEVEL B TAKES FROM A TOTAL OF 50 LAUNCHES AND *Delta Mariner* OPERATIONS

[Numbers are likely overestimated as not all launches would overfly the NCI]

Species	Total number of proposed level B takes annually
Pacific harbor seal	31,161
California sea lion	465,129
Northern elephant seal	80,024
Steller sea lion	1,824
Northern fur seal	62,500

With the incorporation of mitigation measures proposed earlier in this document, the USAF and NMFS expect that only Level B incidental harassment may occur as a result of the proposed activities and that these events will result in no detectable impact on marine mammal species or stocks or on their habitats.

Negligible Impact Analysis and Preliminary Determination

We have 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.'' In making a negligible impact determination, we consider:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited);

(3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

As mentioned previously, we estimate that five species of marine mammals could be potentially affected by Level B harassment from launch activities and that four of those five species could be potentially affected by Level B harassment from *Delta Mariner* operations.

For reasons stated previously in this document, the specified activities are not likely to cause long-term behavioral disturbance, abandonment of the haul-out area, serious injury, or mortality because:

(1) The effects of the activities are expected to be limited to short-term startle responses and localized behavioral changes. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

(2) Launches will likely not occur more than about 10–15 times per year over the next 5 years.

(3) *Delta Mariner* off-loading operations and associated cargo movements within the harbor would occur at a maximum frequency of four times per year, and the vessel's arrival and departure would occur during daylight hours at high tide when the haul out areas are fully submerged and few, if any, pinnipeds are present in the harbor;

(4) The relatively slow operational speed of the *Delta Mariner* (1.5 to 2 kts; 1.72 mph) during its approach to the harbor at high tide and the vessel's slow operational speed (0.75 kts; 0.86 mph) during its approach to the wharf;

(5) There is no potential for large-scale movements leading to serious injury or mortality;

(6) Many of the specified activities do not occur near rookeries;

(7) The availability of alternate areas near the harbor for pinnipeds to avoid the resultant noise from the maintenance and vessel operations.

(8) Results from previous monitoring reports that support our conclusions that the pinnipeds returned to the haul-out sites during periods of low tide after the disturbance and do not permanently

abandon a haul-out site during the conduct of harbor maintenance and *Delta Mariner* operations or launches from VAFB.

We do not anticipate that any injuries, serious injuries, or mortalities would occur as a result of the proposed activities, and we do not propose to authorize injury, serious injury or mortality. These species may exhibit behavioral modifications, including temporarily vacating the area during the proposed activities to avoid the resultant acoustic and visual disturbances. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact rates of recruitment or survival. Further, these proposed activities would not adversely impact marine mammal habitat.

We have preliminarily determined, provided that the USAF carries out the previously described mitigation and monitoring measures, that the impact of conducting the proposed activities may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of certain species of marine mammals.

Based on the analysis contained here of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we have preliminarily determined that the total taking from the proposed activities will have a negligible impact on the affected species or stocks; and that impacts to affected species or stocks of marine mammals would be mitigated to the lowest level practicable.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(A) of the MMPA also requires us to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (northeastern Pacific Ocean) that implicate section 101(a)(5)(A) of the MMPA.

Endangered Species Act

There are no species listed as threatened or endangered in the proposed activity area. Therefore, consultation under section 7 of the ESA is not required.

National Environmental Policy Act (NEPA)

The USAF prepared a Final EA and issued a Finding of No Significant Impact (FONSI) in 1997 as part of its application for an incidental take authorization. On March 1, 1999 (64 FR 9925), NMFS adopted this EA as provided for by the Council on Environmental Quality regulations. In 2003, NMFS prepared its own EA and issued a FONSI for the final rule issued in February, 2004. In January 2009, NMFS prepared a new EA and issued a FONSI for the final rule issued in February 2009.

In 2001, the USAF prepared an EA for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base. In 2005, we prepared an EA augmenting the information contained in the USAF's EA and issued a FONSI on the issuance of an Incidental Harassment Authorization for United Launch Alliance's harbor activities in accordance with section 6.01 of the NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999).

NMFS is currently conducting a new analysis, pursuant to NEPA, to determine whether the issuance of MMPA rulemaking and subsequent LOA(s) may have a significant effect on the human environment. This analysis will be completed prior to the issuance or denial of these proposed regulations and will be taken into account in decision-making on the final rule and LOA.

Coastal Zone Management Act Consistency

The USAF conducts separate consultations with the California Coastal Commission (CCC) for each launch activity, as each one is considered a separate Federal action. Past consultations between the USAF and the CCC have indicated that activities from VAFB similar to those described in this document are consistent to the maximum extent practicable with the enforceable policies of the California Coastal Act (CCA). The USAF is in consultation with the CCC for those launch activities that have not yet been found to be consistent with the CCA. Therefore, NMFS has preliminarily determined that the activities described in this document are consistent to the maximum extent practicable with the enforceable policies of the CCA.

National Marine Sanctuaries Act

NMFS has preliminarily determined that this action is not likely to destroy, cause the loss of, or injure any national marine sanctuary resources. NMFS will conclude any necessary consultation with the National Ocean Service's Office of National Marine Sanctuaries prior to issuance of the final rule.

Classification

Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The 30th Space Wing, USAF, and their contractors are the entities that will be affected by this rulemaking, not a small governmental jurisdiction, small organization or small business, as defined by the Regulatory Flexibility Act. United Launch Alliance, the contractor hired by the USAF to conduct the harbor activities and *Delta* Mariner operations, is a joint venture between Boeing and Lockheed Martin. The SBA defines a small entity as one that is independently owned and operated and not dominant in its field of operation. United Launch Alliance employs approximately 3,900 employees working at sites across the country, has annual revenues exceeding $1 billion, and is dominant in the field of aerospace vehicle launching. United Launch Alliance does not meet the definition of a small entity. Accordingly, this proposed rule, if implemented, would not result in a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: November 27, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Subpart G is added to part 217 to read as follows:

Subpart G—Taking of Marine Mammals Incidental to U.S. Air Force Launches, Aircraft and Helicopter Operations, and Harbor Activities Related to Launch Vehicles From Vandenberg Air Force Base (VAFB), California

Sec.
217.60 Specified activity and specified geographical region.
217.61 Effective dates.
217.62 Permissible methods of taking.
217.63 Prohibitions.
217.64 Mitigation.
217.65 Requirements for monitoring and reporting.
217.66 Letters of Authorization.
217.67 Renewals and Modifications of Letters of Authorization.

Subpart G—Taking of Marine Mammals Incidental to U.S. Air Force Launches, Aircraft and Helicopter Operations, and Harbor Activities Related to Launch Vehicles From Vandenberg Air Force Base (VAFB), California

§ 217.60 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the 30th Space Wing, United States Air Force (USAF), at Vandenberg Air Force Base and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to:

(1) Launching up to 15 space and missiles vehicles each year from Vandenberg Air Force Base, for a total of up to 75 missiles over the 5-year period of these regulations,

(2) Launching up to 35 rockets each year from Vandenberg Air Force Base, for a total of up to 175 rocket launches over the 5-year period of these regulations,

(3) Aircraft flight test operations,

(4) Helicopter operations from Vandenberg Air Force Base, and

(5) *Delta Mariner* (or a similar vessel) operations, cargo unloading activities, and harbor maintenance dredging.

(b) The taking of marine mammals by the USAF may be authorized in a Letter of Authorization only if it occurs from the space launch complexes, launch facilities, and test pads on north and south Vandenberg Air Force Base and the Vandenberg Air Force Base harbor on South Base.

§ 217.61 Effective dates.

[Reserved]

§ 217.62 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 217.60 of this chapter, the Holder of the Letter of Authorization (herein after the USAF) may incidentally, but not intentionally, take marine mammals by harassment, within the area described in § 217.60(b), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The activities identified in § 217.60(a) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 217.60(a) is limited to the indicated number of Level B harassment takes on an annual basis of the following species:

(1) Harbor seals (*Phoca vitulina*)—31,161;

(2) California sea lions (*Zalophus californianus*)—465,129;

(3) Northern elephant seals (*Mirounga angustirostris*)—80,024;

(4) Northern fur seals (*Callorhinus ursinus*)—62,500; and

(5) Steller sea lions (*Eumetopias jubatus*)—1,824.

§ 217.63 Prohibitions.

Notwithstanding takings contemplated in § 217.62(c) and authorized by a Letter of Authorization issued under §§ 216.106 and 217.66 of this chapter, no person in connection with the activities described in § 217.60 may:

(a) Take any marine mammal not specified in § 217.62(c);

(b) Take any marine mammal specified in § 217.62(c) other than by incidental, unintentional Level B harassment;

(c) Take a marine mammal specified in § 217.62(c) if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§ 216.106 and 217.66 of this chapter.

§ 217.64 Mitigation.

(a) When conducting the activities identified in § 217.60(a), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 217.66 of this chapter must be implemented. These mitigation measures include (but are not limited to):

(1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting), which may require approaching pinniped haul-outs and rookeries closer than 1,000 ft (305 m).

(2) For missile and rocket launches, holders of Letters of Authorization must avoid, whenever possible, launches during the harbor seal pupping season of March through June, unless constrained by factors including, but not limited to, human safety, national security, or for space vehicle launch trajectory necessary to meet mission objectives.

(3) Vandenberg Air Force Base must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, California sea lion, and northern fur seal pupping seasons of March through June.

(4) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred, the launch procedure and the monitoring methods must be reviewed, in cooperation with the National Marine Fisheries Service (NMFS), and appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch under that Letter of Authorization.

(5) *Delta Mariner* operations, cargo unloading, and harbor maintenance dredging measures:

(i) If activities occur during nighttime hours, turn on lighting equipment before dusk. Lights must remain on for the entire night to avoid startling pinnipeds.

(ii) Initiate operations before dusk.

(iii) Keep construction noises at a constant level (i.e., not interrupted by periods of quiet in excess of 30 minutes) while pinnipeds are present.

(iv) Initiate a gradual start-up of activities to ensure a gradual increase in noise levels if activities cease for longer than 30 minutes and pinnipeds are in the area.

(v) Conduct visual monitor, by a qualified observer, of the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of activities described in § 217.60(a).

(vi) The *Delta Mariner* and accompanying vessels must enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks; reducing speed to 1.5 to 2 knots (1.5–2 nm/hr; 2.8–3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel must enter the harbor stern first, approaching the wharf and moorings at less than 0.75 knot (1.4 km/hr).

(vii) Explore alternate dredge methods and introduce quieter techniques and equipment as they become available.

(6) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§ 217.65 Requirements for monitoring and reporting.

(a) Unless specified otherwise in the Letter of Authorization, the USAF must notify the Administrator, West Coast Region, NMFS, by letter or telephone, at least 2 weeks prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in § 217.60(a) is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in § 217.62(c), then the USAF must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301–427–8401), within 48 hours of the discovery of the injured or dead animal.

(b) To conduct monitoring of launch activities, the USAF must designate qualified, on-site individuals approved in advance by NMFS, as specified in the Letter of Authorization, to:

(1) Conduct observations on pinniped activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haul-out, for at least 72 hours prior to any planned launch occurring during the harbor seal pupping season (1 March through 30 June) and continue for a period of time not less than 48 hours subsequent to launching.

(2) For launches during the harbor seal pupping season (March through June), conduct follow-up surveys within 2 weeks of the launch to ensure that there were no adverse effects on any marine mammals,

(3) Monitor haul-out sites on the Northern Channel Islands, if it is determined by modeling that a sonic boom of greater than 1 psf is predicted to impact one of the Islands between March 1 and June 30, greater than 1.5 psf between July 1 and September 30, and greater than 2 psf between October 1 and February 28. Monitoring will be conducted at the haul-out site closest to the predicted sonic boom impact area.

(4) Investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction,

(5) Supplement observations on Vandenberg and on the Northern Channel Islands with video-recording of mother-pup seal responses for daylight launches during the pupping season,

(6) Conduct acoustic measurements of those launch vehicles that have not had sound pressure level measurements made previously, and

(7) Include multiple surveys each day that surveys are required that record the species, number of animals, general behavior, presence of pups, age class, gender and reaction to launch noise, sonic booms or other natural or human caused disturbances, in addition to recording environmental conditions such as tide, wind speed, air temperature, and swell.

(c) To conduct monitoring of harbor activities, the USAF must designate qualified, on-site individuals approved in advance by NMFS, as specified in the Letter of Authorization. During nighttime activities, the harbor area will be illuminated, and the observer will use a night vision scope. Monitoring activities will consist of the following:

(1) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities.

(2) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are low enough (less than or equal to 2 ft (0.61 m) for pinnipeds to haul out.

(3) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

(d) Holders of Letters of Authorization must conduct additional monitoring as required under a Letter of Authorization.

(e) The USAF must submit a report to the West Coast Regional Administrator, NMFS, within 90 days after each launch. This report must contain the following information:

(1) Date(s) and time(s) of the launch,

(2) Design of the monitoring program, and

(3) Results of the monitoring program, including, but not necessarily limited to:

(i) Numbers of pinnipeds present on the haul-out prior to commencement of the launch,

(ii) Numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise,

(iii) The length of time pinnipeds remained off the haul-out or rookery,

(iv) Numbers of pinniped adults, juveniles or pups that may have been injured or killed as a result of the launch, and

(v) Behavioral modifications by pinnipeds that were likely the result of launch noise or the sonic boom.

(f) An annual report must be submitted on March 1 of each year.

(g) A final report must be submitted at least 180 days prior to expiration of these regulations. This report will:

(1) Summarize the activities undertaken and the results reported in all previous reports,

(2) Assess the impacts at each of the major rookeries,

(3) Assess the cumulative impacts on pinnipeds and other marine mammals from the activities specified in § 217.60(a), and

(4) State the date(s), location(s), and findings of any research activities related to monitoring the effects on launch noise, sonic booms, and harbor activities on marine mammal populations.

§ 217.66 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the USAF must apply for and obtain a Letter of Authorization.

(b) A Letter of Authorization, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If a Letter of Authorization expires prior to the expiration date of these regulations, the USAF must apply for and obtain a renewal of the Letter of Authorization.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by a Letter of Authorization, the USAF must apply for and obtain a modification of the Letter of Authorization as described in § 217.67.

(e) The Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (i.e., mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the Letter of Authorization shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of a Letter of Authorization shall be published in the **Federal Register** within 30 days of a determination.

§ 217.67 Renewals and Modifications of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 217.66 of this chapter for the activity identified in § 217.60(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in § 217.67(c)(1)), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous Letter of Authorization under these regulations were implemented.

(b) For Letter of Authorization modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in § 217.67(c)(1)) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed Letter of Authorization in the **Federal Register**, including the associated analysis illustrating the change, and solicit public comment before issuing the Letter of Authorization.

(c) A Letter of Authorization issued under § 216.106 and § 217.66 of this chapter for the activity identified in § 217.60(a) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the USAF regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in a Letter of Authorization:

(A) Results from the USAF's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed Letter of Authorization in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.62(c), a Letter of Authorization may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

[FR Doc. 2013–29203 Filed 12–6–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 78, No. 236

Monday, December 9, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 3, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 8, 2014 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number

National Agriculture Statistics Service

Title: Cotton Ginning Survey.

OMB Control Number: 0535–0220.

Summary of Collection: Primary function of the National Agricultural Statistics Services (NASS) is to prepare and issue state and national estimates of crop and livestock production, disposition and prices as well as specialty agricultural and environmental statistics. The Cotton Ginning Survey provides statistics concerning cotton ginning for specific dates and geographic regions and aids in forecasting cotton production, which is required under U.S.C. Title 13, Section 42(a).

Need and Use of the Information: The ginning data collected provides (1) all segments of the cotton industry—buyers, brokers, crushers, shippers, textile firms, and researches with exact quantities of cotton available at specific geographic locations within the U.S. on a regular basis; (2) precise statistics, especially when at least 50 percent of the forecasted cotton production has been ginned in a state; and (3) final season ginning data is used to establish final production. If the information were collected less frequent, the cotton industry would be without county level quantities ginned that could seriously affect transportation costs and marketing strategies.

Description of Respondents: Business or other for-profit.

Number of Respondents: 675.

Frequency of Responses: Reporting: Monthly, Semi-annually, Annually.

Total Burden Hours: 1,104.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–29267 Filed 12–6–13; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 3, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Interstate Shipment of Meat and Poultry.

OMB Control Number: 0583–0143.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided 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 mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome,

not adulterated, and properly labeled and packaged. Section 11015 of the Food, Conservation, and Energy Act, enacted on June 18, 2008, and amended the FMIA and PPIA to provide for cooperative programs whereby meat and poultry state-inspected establishments will be eligible to ship meat and poultry products in interstate commerce.

Need and Use of the Information: States that are interested in participating in the cooperative interstate shipment program must submit a request for an agreement to establish such a program through the appropriate FSIS District Office. In their requests, States must agree to comply with certain conditions in order to qualify for the interstate shipment program. In their request, States must also: (1) Identify establishments in the State that the State recommends for initial selection into the program and (2) include documentation to demonstrate that the State is able to provide necessary inspections services to selected establishments in the State and conduct any related activities that would be required under a cooperative interstate shipment program.

Description of Respondents: Business or other for-profit.

Number of Respondents: 80.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,500.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–29265 Filed 12–6–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) Program Cooperative Agreements and Inventory

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the revision of the currently approved information collection, Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) program Cooperative Agreements and Inventory.

DATES: Comments must be received in writing on or before February 7, 2014 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to: USDA, Forest Service, Fire and Aviation Management (F&AM), Attn: Melissa Frey, 1400 Independence Ave. SW., Mailstop 1107, Washington, DC 20250. Comments also may be submitted via email to: *mfrey@fs.fed.us.*

The public may inspect comments received at USDA Forest Service, F&AM, 1621 N. Kent Street, 9th Floor, Rosslyn, VA during normal business hours. Visitors are encouraged to call ahead to 202–206–1483 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Melissa Frey, Fire and Aviation Management, 202–205–1090. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) Program Cooperative Agreements and Inventory.

OMB Number: 0596–0223.

Type of Request: Revision of a Currently Approved Information Collection.

Abstract: Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) Program Cooperative Agreements are available to State forestry agencies. The program provides State agency participants with surplus Department of Defense, and other Federal agency, equipment and supplies to be used in firefighting and emergency services. The FEPP program loans property to the State, who in turn sub-loans the equipment and supplies to fire departments. The FFP program transfers ownership of the equipment to either the State agency or the individual fire department.

A cooperative agreement collects information from State agency participants and outlines the requirements and rules for the cooperation. Each State forestry agency shall provide an Accountable Officer who will be responsible for the integrity of the program within their respective State. For this reason, FEPP and FFP collect the State forestry agency contact information, the information of the Accountable Officer, and the requirements for participation in the FEPP and FFP programs.

A cooperative agreement will be prepared by each State forestry agency that desires to participate in, one or both of, the programs. State agencies must submit separate agreements if they desire to be participants in both programs. Agreements will be processed and maintained by the Partnerships and Cooperative Programs branch of Fire and Aviation Management in each Forest Service Regional Office.

Since the property belongs to the Forest Service, the inventory system facilitates reports by State agency participants to the Forest Service on the status and location of the property. State agencies use the electronic database Federal Excess Property Management Information System (FEPMIS) to submit information regarding the property make, model, serial number, acquisition value, location, and acquisition date when an item is acquired or no longer need. Forest Service Property Management Technicians collect the information from FEPMIS and enter it into the National Finance Center database, as required by Federal Property Management Regulations. Forest Service Property Management Officers analyze the data collected to ensure that the property accountability is accurate and to confirm the property is being used as required.

The authority to provide surplus supplies to State agencies comes from Federal Property and Administration Services Act of 1949, 40 U.S.C., Sec 202. Authority to loan excess supplies comes from 10 U.S.C., Subtitle A, Part IV, Chapter 153, 2576b, which grants the authority for the FFP program.

With this submission, Forest Service proposes to combine the burden of two separate OMB approved Information Collections 0596–0223 *Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) Cooperative Agreements,* and 0596–0218 *Federal Excess Personal Property (FEPMIS Database)* into one request with the OMB control number of 0596–0223 entitled *Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) Program Cooperative Agreements and Inventory.* Upon approval of this request, the Agency will then submit a discontinue request for the OMB control number 0596–0218 entitled *Federal Excess Personal Property (FEPMIS Database.)*

Estimate of Annual Burden: 1 hour and 2 minutes.

Type of Respondents: State Foresters and State Agency FEPP Property Managers.

Estimated Annual Number of Respondents: 65.

Estimated Annual Number of Responses per Respondent: 302.

Estimated Total Annual Burden on Respondents: 570 hours.

Comment is Invited:

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: December 2, 2013.

James Hubbard,

Deputy Chief, State and Private Forestry.

[FR Doc. 2013–29232 Filed 12–6–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Timber Sale Contract Operations and Administration

AGENCY: Forest Service, USDA.

ACTION: Notice; Request for Comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the revision of a currently approved Information Collection 0596–0225, *Timber Sale Contract Operations and Administration.*

DATES: Comments must be received in writing on or before February 7, 2014 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Lathrop Smith, Natural Resources Research Center, 2150 Centre Avenue, Building A, Suite 316, Fort Collins, CO 80526–8121. Comments also may be submitted by email to *contractoperations@fs.fed.us.*

The public may inspect comments received at the Natural Resources Research Center, 2150 Centre Avenue, Building A, Suite 316, Fort Collins, CO 80526–8121 during normal business hours. Visitors are encouraged to call ahead to 970–295–5020 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Lathrop Smith, 970–295–5961. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Timber Sale Contract Operations and Administration.

OMB Number: 0596–0225.

Expiration Date of Approval: 05/31/2014.

Type of Request: Revision of a Currently Approved Information Collection.

Abstract: Forest Service contracts for the sale of timber and other forest products are bilateral contracts in which both contracting parties are bound to fulfill obligations reciprocally. By their nature, bilateral contracts require both parties to routinely share information and enter into agreements pertaining to operations and performance. Some information collected under Forest Service contracts is required by laws, regulations, and/or timber sale policies. Each contract specifies information the contractor will be required to provide, including the timing and frequency of the information collection.

The type and amount of information collected varies depending on the size, complexity, and length of each contract, and external factors such as weather and market conditions. The information collected includes plans, requests, agreements, and notices necessary for operations under the terms of the contracts. Forest Service officers collect the information from contractors who may be individuals, private sector businesses, or other government entities. The information is submitted in a variety of formats including Forest Service forms, Government Standard and/or Common Forms, forms developed by individual contractors, charts, maps, email messages, facsimiles, and letters. Also, to assist small contractors and lessen their burden, individual Contracting Officers may provide optional forms for some of the information collected. Depending on the purpose of the specific information collection, the information may be submitted by electronic mail, facsimile, conventional mail, or hand delivery.

The information is needed by the Agency for a variety of uses associated with the operations and administration of contracts for the sale of timber and other forest products, in order to: (1) Plan and schedule contract administration workloads, (2) plan and schedule the delivery of government furnished materials needed by contractors, (3) assure the safety of the public in the vicinity of contract work, (4) identify contractor resources that may be used in emergency fire-fighting situations, (5) determine contractor eligibility for additional contract time, (6) determine contractor eligibility for redetermining contract rates, (7) monitor compliance with domestic processing requirements, (8) monitor compliance with Small Business Administration requirements, (9) process agreements and modifications, and (10) inspect and accept work.

Type of Respondents: Timber sale and forest products contractors.

Estimated Annual Number of Contracts: 3,400.

Estimated Annual Number of Respondents: 1,370.

Estimated Annual Responses: 128,100.

Estimated Annual Number of Responses per Respondent: 93.5.

Estimated Total Annual Burden on Respondents: 40,700 hours.

Estimate of Average Burden per Response: 0.32 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: December 2, 2013.

James M. Pena,

Associate Deputy Chief, National Forest System.

[FR Doc. 2013–29236 Filed 12–6–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Financial Information Security Request Form

AGENCY: Forest Service, USDA.

ACTION: Notice; Request for Comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with revision of a currently approved information collection, *Financial Information Security Request Form.*

DATES: Comments must be received in writing on or before February 7, 2014 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Financial Policy, Mail Stop 1149, USDA, Forest Service, 1400 Independence Ave. SW., Washington, DC 20250–1149. Comments also may be submitted via email to: *omasahudu@fs.fed.us.*

The public may inspect comments received at USDA Forest Service, Rosslyn Plaza, Building C, 1601 N. Kent Street, RPC–7, Arlington, VA during normal business hours. Visitors are encouraged to call ahead to (703) 605–4803 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Osman Masahudu, (703)–605–4803. Individuals who use telecommunications for the deaf (TDD) may call the Federal Relay Service (FRS) at (800)–877–8339, between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Financial Information Security Request Form.

OMB Number: 0596–0204.

Expiration Date of Approval: 02/28/2014.

Type of Request: Extension without change of a currently approved Information Collection.

Abstract: The majority of the Forest Service's financial records are in databases stored at the National Finance Center (NFC). The Forest Service uses employees and contractors to maintain these financial records. The employees and contractors must have access to the NFC database to perform their duties.

The Forest Service uses an electronic form FS–6500–214, *Financial Information Security Request Form,* to apply to NFC for database access for certain employees or contractors. This form is used to add, modify, and/or delete authorized users of the different system modules.

The information collected includes: Name, work email, work telephone number, and job title. The contractor checks the box for a non-federal employee and provides the expiration date of the contract. The contractor then selects the databases and actions needed. Based on the database(s) selected, the contractor provides additional information regarding the financial systems, work location, access scope, etc. Once the form is submitted to the client security officer, a one-page agreement automatically prints, which the contractor and client security officer sign. The agreement is a certification statement that acknowledges the contractor's recognition of the sensitive nature of the information and the agreement to use the information only for authorized purposes. The information collected is shared with those managing or overseeing the financial systems used by the Forest Service; this includes auditors.

Estimate of Burden per Response: 10 minutes.

Type of Respondents: Federal and contracted employees.

Estimated Annual Number of Respondents: 9,549.

Estimated Annual Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 4,774 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: December 2, 2013.

Thelma J. Strong,

Chief Financial Officer.

[FR Doc. 2013–29230 Filed 12–6–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Resource Coordinating Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Cancellation.

SUMMARY: The U.S. Department of Agriculture, Forest Service was required to cancel the October 17–18, 2013 meeting of the Forest Resource Coordinating Committee due to the Government partial shutdown which began October 1, 2013. The Notice of Meeting for the October 17–18, 2013 meeting was published in the **Federal Register**, Volume 78, Number 180, Tuesday, September 17, 2013, Page 57128.

FOR FURTHER INFORMATION CONTACT: Maya Solomon, Forest Resource Coordinating Committee Program Coordinator; by phone at (202) 205–1376, or Ted Beauvais, Designated Federal Officer; by phone at (202) 205–1190. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

Dated: November 22, 2013.

Paul Ries,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 2013–29240 Filed 12–6–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Resource Coordinating Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Forest Resource Coordinating Committee will meet in Washington, DC, February 6 and 7, 2014. The Committee is authorized under Section 8005 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246). Additional information on the Forest Resource Coordinating Committee can be found

by visiting the Committee's Web site at: *http://www.fs.fed.us/spf/coop/frcc/.*

DATES: The meeting will be held on February 6 and 7, 2014 from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the USDA Whitten Building, 1400 Independence Ave. SW., Conference Room 108–A, Washington, DC. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on the Forest Resource Coordinating Committee Web site listed above. Visitors are encouraged to call ahead of time to facilitate entry into the Whitten Building.

FOR FURTHER INFORMATION CONTACT: Maya Solomon, Forest Resource Coordinating Committee Program Coordinator, Cooperative Forestry Staff, 202–205–1376 or Karl Dalla Rosa, Cooperative Forestry Staff, 202–205–6206. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to develop recommendations to submit to the Secretary regarding alignment of landowner assistance delivery systems, forest inventory and analysis, markets, climate change adaptation, forest conditions, threats to forest health, and landscape scale conservation and management. The meeting is open to the public. All meetings are subject to change or cancellation.

Anyone who would like to bring related matters to the attention of the Committee or to make an oral statement should request in writing by February 3, 2014. The agenda will include time for people to make oral statements of three minutes or less. Written comments and requests for time for oral comments must be sent to Maya Solomon, Forest Resource Coordinating Committee Program Coordinator at 1400 Independence Ave. SW., mailstop 1123, Washington, DC 20250; by email to *mayasolomon@fs.fed.us.* A summary of the meeting will be posted on the Web site listed above within 21 days after the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodations for access to the facility or proceedings by contacting the person listed under the **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: November 29, 2013.

Paul Ries,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 2013–29238 Filed 12–6–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hiawatha East Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting cancellations.

SUMMARY: The Hiawatha East Resource Advisory Committee (RAC) meetings scheduled on the dates below are cancelled. The meetings were scheduled to meet in Kincheloe, Michigan. The RAC is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) (Pub. L. 110–343) and operates in compliance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463).

DATES: The cancelled meetings were scheduled for 6:00 p.m. on the following dates:

- May 30, 2013
- June 20, 2013
- July 11, 2013
- August 15, 2013
- September 19, 2013

ADDRESSES: The cancelled meetings were to be held at the Chippewa County 911 Center, 4657 West Industrial Park Drive, Kincheloe, Michigan. Written comments concerning these cancellations may be submitted as described under **FOR FURTHER INFORMATION.**

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Hiawatha National Forest (NF), Supervisor's Office. Please call ahead to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Janel Crooks, RAC Coordinator, USDA Forest Service, Hiawatha NF, Supervisor's Office, 820 Rains Drive, Gladstone, Michigan 49837; by phone at 906–428–5829 or via email at *HiawathaNF@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

Dated: November 25, 2013.

Stevan J. Christiansen,

Designated Federal Officer.

[FR Doc. 2013–29298 Filed 12–6–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AD09

Publicly Managed Recreation Opportunities, Recreation Fees

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of final directive.

SUMMARY: The Forest Service is issuing a final directive providing direction on recreation fees in chapter 30 of new Forest Service Handbook (FSH) 2309.13. This chapter enumerates the requirements for recreation fees charged by the Forest Service under the Federal Lands Recreation Enhancement Act (REA) (16 U.S.C. 6801–6814), which was enacted December 8, 2004. This chapter replaces the Forest Service's interim implementation guidelines on REA and obsolete direction on recreation fees in FSM 2330.

DATES: This final directive is effective December 9, 2013.

FOR FURTHER INFORMATION CONTACT: Chris Hartman, *chartman01@fs.fed.us,* 202–205–1227.

SUPPLEMENTARY INFORMATION:

Background and Need for the Final Directive

REA authorizes the Federal land management agencies, including the Forest Service, to charge several types of recreation fees and to invest the recreation fees at the sites and areas where they were collected to enhanced facilities and services provided to visitors. REA replaced the recreation fee authority under section 4 of the Land and Water Conservation Fund Act (16 U.S.C. 460*l*–6a) and the Recreational Fee Demonstration Program statute (Pub. L. 104–134, § 315).

On April 25, 2005, the Forest Service issued *Federal Lands Recreation Enhancement Act (REA): Forest Service Interim Implementation Guidelines* (Guidelines). The statutory direction in REA has been appropriately integrated

into administration of the Forest Service's Recreation Fee Program under the Guidelines.

This final directive, which replaces the Guidelines, formalizes direction on REA by incorporating it into the Forest Service's Directive System. The final directive incorporates without interpretation the requirements in REA and therefore was not subjected to public comment. Formalizing direction on these requirements will assist Forest Service employees who administer the Recreation Fee Program. The final directive will be available to the public online at *http://www.fs.fed.us/im/directives.*

Regulatory Certifications

Environmental Impact

This final directive will incorporate without interpretation the requirements in REA into the Forest Service's Directive System. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The Agency has concluded that this final directive falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

This final directive has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review. The Office of Management and Budget (OMB) has determined that this final directive is not significant. The final directive will not have an annual effect of $100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. The final directive will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, the final directive will not alter the budgetary impact of entitlement, grant, or loan programs or the rights and obligations of beneficiaries of those programs. Accordingly, this final directive is not subject to OMB review under E.O. 12866.

The Agency has considered this final directive in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The Agency has determined that this final directive will not have a significant economic impact on a substantial number of small entities as defined by the act because the final directive will not impose record-keeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market. The final directive will formalize direction on the Forest Service's authority to charge recreation fees to the public and will have no direct effect on small businesses.

No Takings Implications

The Agency has analyzed this final directive in accordance with the principles and criteria contained in E.O. 12630. The Agency has determined that this final directive does not pose the risk of a taking of private property.

Civil Justice Reform

The Agency has reviewed this final directive under E.O. 12988 on civil justice reform. After adoption of this final directive, (1) all State and local laws and regulations that conflict with this final directive or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final directive; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of this final directive on State, local, and Tribal governments and the private sector. This final directive will not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Agency has considered this final directive under the requirements of E.O. 13132 on federalism and has determined that the final directive conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary.

Moreover, this final directive does not have Tribal implications as defined by E.O. 13175, ''Consultation and Coordination with Indian Tribal Governments,'' and therefore advance consultation with Tribes is not required.

Energy Effects

This final directive has been reviewed under E.O. 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' The Agency has determined that this final directive does not constitute a significant energy action as defined in the E.O.

Controlling Paperwork Burdens on the Public

This final directive does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: November 26, 2013.

Thomas L. Tidwell,

Chief, U.S. Forest Service.

[FR Doc. 2013–29305 Filed 12–6–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Publication of Depreciation Rates

AGENCY: Rural Utilities Service.

ACTION: Notice of Depreciation Rates for Telecommunications Plant.

SUMMARY: The United States Department of Agriculture (USDA) Rural Utilities Service (RUS) administers rural utilities programs, including the Telecommunications Program. RUS announces the depreciation rates for telecommunications plant for the period ending December 31, 2012.

DATES: These rates are effective immediately and will remain in effect until rates are available for the period ending December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Keith B. Adams, Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590—Room 5151, 1400 Independence Avenue SW., Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION: In 7 CFR part 1737, Pre-Loan Policies and Procedures Common to Insured and

Guaranteed Telecommunications Loans, § 1737.70(e) explains the depreciation rates that are used by RUS in its feasibility studies. § 1737.70(e)(2) refers to median depreciation rates published by RUS for all borrowers. The following chart provides those rates, compiled by RUS, for the reporting period ending December 31, 2012:

MEDIAN DEPRECIATION RATES OF RURAL UTILITIES SERVICE BORROWERS BY EQUIPMENT CATEGORY FOR PERIOD ENDING DECEMBER 31, 2012

Telecommunications plant category	Depreciation rate
1. Land and Support Assets:	
a. Motor vehicles	16.00
b. Aircraft	14.29
c. Special purpose vehicles	13.24
d. Garage and other work equipment	10.00
e. Buildings	3.20
f. Furniture and office equipment	10.00
g. General purpose computers	20.00
2. Central Office Switching:	
a. Digital	9.09
b. Analog & Electro-mechanical	10.00
c. Operator Systems	9.30
3. Central Office Transmission:	
a. Radio Systems	10.00
b. Circuit equipment	10.00
4. Information origination/termination:	
a. Station apparatus	12.00
b. Customer premises wiring	10.00
c. Large private branch exchanges	11.20
d. Public telephone terminal	11.53
e. Other terminal equipment	10.50
5. Cable and wire facilities:	
a. Aerial cable—poles	6.00
b. Aerial cable—metal	5.80
c. Aerial cable—fiber	5.00
d. Underground cable—metal	5.00
e. Underground cable—fiber	5.00
f. Buried cable—metal	5.05
g. Buried cable—fiber	5.00
h. Conduit systems	3.74
i. Other	5.40

John Charles Padalino,

Administrator, Rural Utilities Service.

[FR Doc. 2013–29268 Filed 12–6–13; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Tri-State Generation and Transmission Association, Inc.: Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of an Environmental Assessment.

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture, has issued an Environmental Assessment (EA) to meet its responsibilities under the National Environmental Policy Act (NEPA), the Council on Environmental Quality's (CEQ) regulations for implementing NEPA (40 CFR Parts 1500–1508), and RUS's Environmental and Policies and Procedures (7 CFR Part 1794) in connection with potential impacts related to a proposal by Tri-State Generation and Transmission Association, Inc. (Tri-State) with headquarters in Westminster, Colorado. The proposal consists of the construction of approximately 72 miles of 230 kilovolt (kV) transmission line in eastern Colorado between the Burlington Substation (located in Kit Carson County) and the Wray Substation (located in Yuma County) (proposed Project). Tri-State is requesting financial assistance from RUS for the construction of the proposed Project.

RUS is considering funding the proposed Project, thereby making it an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(f), and its implementing regulation, ''Protection of Historic Properties'' (36 CFR part 800). To meet its responsibilities under Section 106, RUS must take into account the effect of the proposed Project on historic properties; i.e., buildings, structures, sites, objects and districts which are listed or eligible for listing on the *National Register of Historic Places (NRHP).* RUS has coordinated its compliance with Section 106 with the steps taken to comply with NEPA and its environmental policies and procedures. Accordingly, this EA also documents the manner in which RUS has met its responsibilities to take into account effects to historic properties. RUS has determined that the proposed project will have no adverse effects to historic properties listed on or eligible for listing on the *NRHP.*

DATES: Written comments on this Notice must be received on or before January 8, 2014.

ADDRESSES: Copies of the EA will be available for public review at the Agency's Web site: *http://www.rurdev.usda.gov/UWP-EA-Burlington-Wray.html.,* at Tri-State's Web site: *http://www.tristategt.org/Transmission/Burlington-Wray.cfm,* and at the following repositories:

TABLE 5—FY 2013 COMMON POOL INCIDENTAL CATCH TACS

Building location	Address	Phone
Wray Public Library	621 Blake Street Wray, CO 80758	970–332–4744
Burlington Public Library	321 14th Street Burlington, CO 90907	719–346–8109

FOR FURTHER INFORMATION CONTACT: To obtain copies of the EA or for further information, contact Mr. Dennis Rankin, Environmental Protection Specialist, USDA/RUS, 1400 Independence Ave. SW., Room 2244–S, Stop 1571, Washington, DC 20250–1571, or email: *dennis.rankin@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Tri-State proposes to construct a single-circuit 230-kV line approximately 72 miles in length between the Burlington Substation (located in Kit Carson County) and the Wray Substation (located in Yuma County). The Burlington Substation would be expanded from the existing two breaker arrangement to a three breaker ring bus arrangement to allow for the new 230-kV line bay. The Wray Substation would require a new 230-kV ring bus configuration with three new 230-kV circuit breakers.

The overall purpose of the proposed Project is to alleviate transmission systems limitations in eastern Colorado,

improve Tri-State's ability to dispatch generation resources in eastern Colorado, and to improve Tri-State's ability to deliver energy to native load customers. Specifically, the proposed Project would remedy the following existing system deficiencies: (1) The Burlington-Wray 115-kV transmission line limits Tri-States ability to dispatch existing Limon and Burlington generation resources; (2) Operating restrictions have been placed on the new 51 megawatt (MW) Kit Carson Windpower Project limit due to thermal limitations on the 115-kV transmission line; and (3) Thermal limits on the 115-kV line restrict present and future deliverability of power from Tri-State generation resources (on the north side of the bottleneck) to serve Tri-State's electric load in southeastern Colorado (on the other side of the bottleneck).

An EA that describes the proposed Project in detail and discusses its anticipated environmental impacts has been prepared by Tri-State and Tetra Tech. RUS has reviewed and accepted the document as its EA for the proposed Project.

Questions and comments should be sent to RUS at the mailing or email addresses provided in this Notice. RUS should receive comments on the EA in writing by January 8, 2014 to ensure that they are considered in its environmental impact determination. Should RUS, based on the EA, determine that the impacts of the construction and operation of the proposed Project would not have a significant environmental impact; it will prepare a Finding of No Significant Impact. Public notification of a Finding of No Significant Impact would be published in the **Federal Register** and in newspapers with circulation in the proposal area.

Any final action by RUS related to the proposed Project will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations, and completion of the environmental review requirements as prescribed in RUS's Environmental Policies and Procedures (7 CFR Part 1794).

Dated: November 22, 2013.

Mark S. Plank,

Director, Engineering and Environmental Staff, USDA, Rural Utilities Service.

[FR Doc. 2013–29269 Filed 12–6–13; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–103–2013]

Foreign-Trade Zone 62—Brownsville, Texas; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Brownsville Navigation District, grantee of FTZ 62, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on December 4, 2013.

FTZ 62 was approved by the FTZ Board on October 20, 1980 (Board Order 166, 45 FR 71638, 10/29/1980), and expanded on September 30, 1983 (Board Order 226, 48 FR 45814, 10/7/1983), on October 24, 1989 (Board Order 444, 54 FR 46098, 11/1/1989), and on August 21, 2003 (Board Order 1288, 68 FR 52385–52386, 9/3/2003).

The current zone includes the following sites: *Site 1* (18,938 acres)—Brownsville Navigation District Port Complex and the NAFTA Industrial Park located at 6984 N. FM 511 in Brownsville; *Site 2* (203 acres, 3 parcels)—Valley International Airport located on Rio Hondo Road in Harlingen; *Site 3* (116 acres, 3 parcels)—Harlingen Industrial Park located at FM 106 and FM 1595 in Harlingen; and, *Site 4* (758 acres, 4 parcels)—FINSA Industrial Park, 1101 Joaquin Cavazos Road, Los Indios.

The grantee's proposed service area under the ASF would be Cameron County, Texas, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Brownsville Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone under the ASF as follows: Renumber a 71-acre portion of Site 1 as Site 5; and, Sites 1 thru 5 would become ''magnet'' sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 as renumbered be so exempted. No subzones or usage-driven sites are being requested at this time.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is February 7, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 24, 2014.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*. For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: December 4, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–29326 Filed 12–6–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–75–2013]

Subzone 38E, Authorization of Limited Production Activity, Black & Decker (U.S.) Inc., (Power Tools), Fort Mill, SC

On July 19, 2013, Black & Decker (U.S.) Inc. submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within Subzone 38E, in Fort Mill, South Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 45911–45912, 7–30–2013). The FTZ Board has determined that further review of part of the proposed activity is warranted at

this time. The production activity described in the notification is authorized on a limited basis, subject to the FTZ Act and the Board's regulations, including Section 400.14, and further subject to a restriction requiring that all foreign status inputs classified within HTSUS Chapter 32 used in the production activity be admitted to the subzone in privileged foreign status (19 CFR 146.41). Also, as noted in the request, textile inputs (classified under HTSUS Subheadings 4202.92, 5911.90 and 6307.90) will be admitted to the subzone in privileged foreign status.

Dated: December 2, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–29351 Filed 12–6–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–76–2013]

Subzones 247A and 247B, Authorization of Production Activity, GE Transportation, (Locomotives, Off-Highway Vehicles and Motors/Engines), Lawrence Park and Grove City, Pennsylvania

On July 18, 2013, GE Transportation submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facilities within Subzones 247A and 247B, in Lawrence Park and Grove City, Pennsylvania.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 46315–46318, 7–31–2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14. As noted in the request, textile inputs (classified under HTSUS Subheadings 4202.92, 5911.90 and 6306.12) will be admitted to the subzones in privileged foreign status (19 CFR 146.41).

Dated: December 2, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–29347 Filed 12–6–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–101–2013]

Foreign-Trade Zone (FTZ) 230—Piedmont Triad Area, North Carolina, Notification of Proposed Production Activity, Sonoco Display and Packaging (Kitting—Gift Sets), Rural Hall and Winston-Salem, North Carolina

The Piedmont Triad Partnership, grantee of FTZ 230, submitted a notification of proposed production activity to the FTZ Board on behalf of Sonoco Display and Packaging for its facilities located in Rural Hall and Winston-Salem, North Carolina within FTZ 230. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on November 19, 2013.

Sonoco Display and Packaging already has authority to produce various cosmetic and personal hygiene gift sets within Sites 24—27 of FTZ 230. The current request would add deodorant/antiperspirant and body wash gift sets and certain foreign components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Sonoco Display and Packaging from customs duty payments on the foreign status components used in export production. On its domestic sales, Sonoco Display and Packaging would be able to choose the duty rates during customs entry procedures that apply to deodorant/antiperspirant and body wash gift sets (free, 4.9%) for the foreign status inputs noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components sourced from abroad include: plastic boxes and cases; train cases, vanity cases, component bags, wallets, various hand-held bags, and handbags and clutches of textile materials (HTSUS Subheadings 4202.12, 4202.22, 4202.29, 4202.32, 4202.92, and 4202.99); component bags of plaited natural materials; set boxes; glass trays; plush items (*e.g.,* stuffed toys, animals); eyelash curlers; and, perfume pursers (duty rate ranges from free to 20%). Inputs included in certain textile categories (classified within HTSUS Subheadings 4202.12, 4202.22, 4202.32, and 4202.92) will be admitted to the zone under domestic (duty-paid) status or privileged foreign status (19 CFR 146.41), thereby precluding inverted tariff benefits on such items.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is January 21, 2014.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* (202) 482–1378.

Dated: December 2, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–29334 Filed 12–6–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–102–2013]

Foreign-Trade Zone (FTZ) 20—Suffolk, Virginia; Notification of Proposed Production Activity; Canon Virginia, Inc. (Toner Cartridges, Toner Bottles and Cartridge Parts); Newport News, Virginia

Canon Virginia, Inc. (CVI) submitted a notification of proposed production activity to the FTZ Board for its facilities in Newport News, Virginia within Subzone 20D. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on November 27, 2013.

CVI already has authority to produce a range of printers, copiers and their parts, including toner cartridges and toner bottles, within Subzone 20D. The current request would add foreign-status components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials and components and specific finished products listed in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt CVI from customs duty

payments on the foreign-status components used in export production. On its domestic sales, CVI would be able to choose the duty rates during customs entry procedures that apply to toner cartridges, bottles and cartridge parts (duty free) for the foreign-status inputs noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: oil (releasing agent—aliphatic hydrocarbon), polymer fixing agent (polyol curative), resins (polyethylene terephthalate, polyisocynate prepolymer, and high impact polystyrene) and filter paper (duty rates are: duty-free, 10 cents/barrel or 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is January 21, 2014.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*.

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: December 3, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–29332 Filed 12–6–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–933]

Frontseating Service Valves From the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 13, 2013, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty on frontseating service valves from the People's Republic of China.[1] The period of review (''POR'') is April 1, 2011, through March 31, 2012. The review covers two exporters of subject merchandise, Zhejiang DunAn Hetian Metal Co., Ltd. (''DunAn'') and Zhejiang Sanhua Co., Ltd. (''Sanhua''). The Department continues to find that DunAn did not have reviewable entries during the POR. Additionally, we find that Sanhua made sales in the United States at prices below normal value (''NV''). Based on our analysis of the comments received, we have made changes to our margin calculations for Sanhua. The final weighted-average dumping margin for this review is listed below in the section entitled ''Final Results of the Review.''

DATES: *Effective Date:* December 9, 2013.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Operations, Office III, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4243.

Background

On May 13, 2013, the Department published the *Preliminary Results.* At that time, we invited interested parties to comment on our *Preliminary Results.*

Subsequent to the *Preliminary Results,* we conducted a verification of Sanhua's questionnaire responses in Xialiquan Village, Zhejiang Province, People's Republic of China from August 5 through August 9, 2013.[2]

We received case briefs from Parker-Hannifin Corporation (''Petitioner'') and Sanhua on October 17, 2013,[3] and rebuttal briefs from the same parties on October 23, 2013.[4] At Sanhua's request, we held a hearing on October 29, 2013.[5]

Scope of the Order

The merchandise covered by this order is frontseating service valves, assembled or unassembled, complete or incomplete, and certain parts thereof. Frontseating service valves are classified under subheading 8481.80.1095, and also have been classified under subheading 8415.90.80.85, of the Harmonized Tariff Schedule of the United States (''HTSUS''). It is possible for frontseating service valves to be manufactured out of primary materials other than copper and brass, in which case they would be classified under HTSUS subheadings 8481.80.3040, 8481.80.3090, or 8481.80.5090. In addition, if unassembled or incomplete frontseating service valves are imported, the various parts or components would be classified under HTSUS subheadings 8481.90.1000, 8481.90.3000, or 8481.90.5000. The HTSUS subheadings are provided for convenience and customs purposes. A full written description of the scope of the order is contained in the memorandum from Edward C. Yang, Office Director, Office VII, Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, ''Frontseating Service Valves from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2011–2012 Administrative Review'' (''Issues and Decision Memorandum''), which is hereby adopted by this notice and incorporated herein by reference. The written description is dispositive.

Final Determination of No Reviewable Entries

As noted in the *Preliminary Results,* we received a no-shipment certification from DunAn.[6] The company reported that it made no shipments of subject merchandise to the United States during the POR. U.S. Customs and Border Protection (''CBP'') confirmed that it did not identify evidence of shipments from DunAn. Following publication of the *Preliminary Results,* we received no comments from interested parties regarding DunAn. As a consequence, and because the record contains no evidence to the contrary, we continue to find that DunAn did not make reviewable entries during the POR. Accordingly, consistent with the Department's refinement to its

[1] *See Frontseating Service Valves From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012,* 78 FR 27954 (May 13, 2013) (''*Preliminary Results*'').

[2] *See* Memorandum to Melissa Skinner, ''2011–2012 Administrative Review of the Antidumping Duty Order on Frontseating Service Valves (''FSVs'') from the People's Republic of China (''PRC''): Verification of Zhejiang Sanhua Co., Ltd.,'' dated September 23, 2013.

[3] *See* letter from Petitioner, ''Frontseating Service Valves from the People's Republic of China; A–570–933; Petitioner's Case Brief,'' dated October 17, 2013; *see also* letter from Sanhua, ''Frontseating Service Valves from the People's Republic of China; A–570–933; Case Brief by Zhejiang Sanhua Co., Ltd.,'' dated October 17, 2013.

[4] *See* letter from Petitioner, ''Frontseating Service Valves from the People's Republic of China; A–570–933; Petitioner's Rebuttal Case Brief,'' dated October 23, 2013; *see also* letter from Sanhua, ''Frontseating Service Valves from the People's Republic of China; A–570–933; Rebuttal Brief of Zhejiang Sanhua Co., Ltd.,'' dated October 23, 2013.

[5] *See* hearing transcript, ''In the Matter of the Antidumping Duty Order on Frontseating Service Valves (''FSVs'') from the PRC (A–570–933) (4/1/2011–3/31/2012),'' filed November 6, 2013; *see also* Frontseating Service Valves from the People's Republic of China; A–570–933; Request for a Hearing by Zhejiang Sanhua Co., Ltd..

[6] *See Preliminary Results,* 78 FR at 27954.

assessment practice in nonmarket economy (''NME'') cases, the Department finds that it is appropriate not to rescind the review in these circumstances, but rather to complete the review with respect to DunAn and issue appropriate instructions to CBP based on the final results of the review.[7]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum follows as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. 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 version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on an analysis of the comments received from interested parties and a review of the record, the Department has made the following changes in the margin calculation:

- We revised Sanhua's reported control number (''CONNUM'')-specific factors of production (''FOPs''), where applicable, to include the FOPs of previously excluded products. *See* Comment 2 of the accompanying Issues and Decision Memorandum.
- We revised Sanhua's brass and copper scrap offsets to reflect the yield losses attributable only to those components produced using brass and copper inputs based on the products examined at verification. *See* Comment 4 of the accompanying Issues and Decision Memorandum.
- We based the surrogate value for brass scrap on the GTA data from the Philippines, as adjusted for inflation. *See* Comment 7 of the accompanying Issues and Decision Memorandum.
- We determined the surrogate financial ratios in this review using only the financial statements of Makati Foundry Inc. *See* Comment 8 of the accompanying Issues and Decision Memorandum.
- We based the calculation of the margin program on Sanhua's FOP dataset, FOP02. *See* Comment 10 of the accompanying Issues and Decision Memorandum.
- We revised the calculation of brokerage and handling to reflect the per-unit SV for brokerage and handling on the per-unit costs identified in *Doing Business 2013, Economy Profile: Philippines* without making adjustments for container size. *See* Comment 11 of the accompanying Issues and Decision Memorandum.

Final Results of the Review

As a result of this review, we determine that the following weighted-average dumping margin exists for the period April 1, 2011, through March 31, 2012:

Exporter	Weighted-average margin (percentage)
Zhejiang Sanhua Co., Ltd.	3.88

Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as Amended (''the Act'') and 19 CFR 351.212(b).[8] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review for each individual assessment rate calculated in the final results of this review that is above *de minimis* (*i.e.,* at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent).

The Department recently announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate. For a full discussion of this practice, *see NME Antidumping Proceedings.*

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 Act: (1) For DunAn, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to DunAn in the most recently-completed review of the company; (2) for Sanhua, the cash deposit rate will be the rate identified in ''Final Results of the Review,'' as listed above; (3) for previously investigated or reviewed PRC and non-PRC exporters that are not under review in this segment of the proceeding but that received a separate rate in a previous segment, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (4) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will continue to be the PRC-wide rate of 55.62 percent;[9] and (5) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. The cash deposit requirements, when

[7] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (''*NME Antidumping Proceedings*'').

[8] *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8103 (February 14, 2012).

[9] This rate was established in the final results of the original less than fair value investigation. *See Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 74 FR 10886 (March 13, 2009).

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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

In accordance with 19 CFR 351.305(a)(3), this notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under the APO. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These final results of review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 29, 2013.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

Issues for the Final Results

Comment 1: Adverse Facts Available
Comment 2: Excluded Products
Comment 3: Brass and Copper Consumption
Comment 4: Brass and Copper Scrap
Comment 5: Reported FOPs and Finished FSV Weights
Comment 6: Surrogate Country
Comment 7: Surrogate Value for Brass Scrap
Comment 8: Selection of the Surrogate Financial Statements
Comment 9: *Ex Parte* Meetings
Comment 10: Use of the Correct Data Set
Comment 11: Brokerage and Handling Calculations

[FR Doc. 2013–29333 Filed 12–6–13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–808]

Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate From the Russian Federation; Final Results of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 3, 2013, the Department of Commerce (the Department) published the preliminary results of an administrative review of the suspension agreement on certain cut-to-length carbon steel plate from the Russian Federation covering Joint Stock Company Severstal (Severstal). *See Certain Cut-to-Length Carbon Steel Plate From the Russian Federation; 2012; Preliminary Results of Administrative Review of the Antidumping Duty Suspension Agreement,* 78 FR 61333 (October 3, 2013) and accompanying Decision Memorandum (*Preliminary Results*). The period of review (POR) is January 1, 2012 through December 31, 2012. We received no comments from interested parties. For these final results, we have made no changes to our preliminary results.

DATES: *Effective Date:* December 9, 2013.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Anne D'Alauro, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–0162 or (202) 482–4830, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2002, the Department signed an agreement under section 734(b) of the Tariff Act of 1930, as amended (the Act), with Russian steel producers/exporters, including Severstal, which suspended the antidumping duty investigation on certain cut-to-length carbon steel plate (CTL plate) from the Russian Federation. *See Suspension of Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation,* 68 FR 3859 (January 27, 2003) (Agreement). On October 3, 2013, the Department published its preliminary results of the administrative review of the Agreement for certain CTL plate from the Russian Federation produced by Severstal, the producer determined to account for substantially all (not less than 85 percent) of the subject merchandise imported into the United States during the January 1, 2012 through December 31, 2012 POR. *See Preliminary Results.* In its preliminary results, the Department determined that information submitted by Severstal indicated that, during the POR, Severstal adhered to the terms of the Agreement and that the Agreement is functioning as intended. We invited interested parties to comment on our preliminary results. No interested parties submitted comments.

Scope of Review

The products covered by the Agreement are CTL plate from the Russian Federation. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of the Agreement is dispositive. For a full description of the scope of this Agreement, see Appendix B of the Agreement.

Final Results of Review

We have made no changes to the preliminary results. Our review of the information submitted by Severstal indicates that the company has adhered to the terms of the Agreement and that the Agreement is functioning as intended. *See Preliminary Results.*

This notice serves as the only 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 return/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. We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 3, 2013.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2013–29340 Filed 12–6–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–943]

Certain Oil Country Tubular Goods From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is rescinding the administrative review of the antidumping duty order on certain oil country tubular goods (OCTG) from the People's Republic of China (PRC) for the period May 1, 2012, through April 30, 2013, based on the timely withdrawal of the review request by United States Steel Corporation (Petitioner). No other interested party requested the instant review.

DATES: *Effective Date:* December 9, 2013.

FOR FURTHER INFORMATION CONTACT: Dena Crossland or Angelica Mendoza, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone: (202) 482–3362 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2013, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on OCTG from the PRC.[1] The period of review (POR) is May 1, 2012, through April 30, 2013. On May 31, 2013, the Department received a timely request from Petitioner to conduct an administrative review of 529 PRC companies in accordance with 19 CFR 351.213(b).[2] There were no other requests for an administrative review by any other party. Pursuant to Petitioner's request, on June 28, 2013, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), the Department initiated an administrative review of the antidumping duty order on OCTG from the PRC for the 2012–2013 POR.[3] On August 9, 2013, Petitioner timely withdrew its request for review for all 529 PRC companies for which it had made a review request.

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. In this case, Petitioner timely withdrew its request for a review, and no other interested party requested a review.[4] Therefore, the Department is rescinding the administrative review of the antidumping duty order on OCTG from the PRC covering the period May 1, 2012, through April 30, 2013, in accordance with 19 CFR 351.213(d)(1).

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of OCTG from the PRC during the POR at rates equal to the cash deposit or bonding rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**.

Notification to Importers

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 Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

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 and as explained in the APO itself. 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 section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: December 2, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

1. 1st Huabei OCTG Machinery Co., Ltd.
2. Adler Steel Limited
3. Adler Steel Limited Tianjin China c/o Adler Steel Limited
4. Angang New Steel Co. Ltd.
5. Angang Steel Co., Ltd.
6. Anhui Tianda Oil Pipe Co. Ltd. and Anhui Tianda Enterprise (Group) Co. Ltd.
7. Anshan Xin Yin Hong Petroleum and Gas Tubular Co.
8. Anshan Zhongyou TIPO Pipe & Tubing Co., Ltd.
9. Anton Oilfield Services (Group) Ltd.
10. Anton Tongao Technology Industry Co. Ltd.
11. Anyang Iron & Steel Group Ltd.—Seamless
12. Aofei Tele Dongying Import & Export Co., Ltd.
13. Baoji Petroleum Steel Pipe and Tube Works
14. Baoji-Sumitomo Metal Industries (SMI) Petroleum Steel Pipe, Co. Ltd. (BSG)
15. Baolai Steel Pipe and Tianjin Baolai International Trade Co., Ltd.
16. Baoshan Iron & Steel Co. Ltd. Precision Steel Tube Factory
17. Baoshan Iron & Steel Co. Ltd. Shanghai Baosteel Group Corporation and Steel Tubing Plant of Baosteel Branch
18. Baosteel America Inc.
19. Baosteel Group Shanghai Steel Tube
20. Baosteel International (Shanghai Baosteel International Economic & Trading Co., Ltd.)
21. Baotou Found Petroleum Machinery Co. Ltd.
22. Baotou Iron & Steel (Group) Co., Ltd.
23. Bazhou Hongyuan Petroleum Equipment Materials Co., Ltd.
24. Bazhou Seamless Oil Pipe Co., Ltd.
25. Bazhou Zhuofa Steel Pipe Co., Ltd.
26. Beijing Bell Plumbing Manufacturing Ltd.
27. Beijing Changxing Kaida Composite Material Development Co., Ltd.
28. Beijing Jinghua Global Trading Co., Ltd.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 78 FR 25423 (May 1, 2013).

[2] *See* Petitioner's submission entitled, ''Oil Country Tubular Goods from the People's Republic of China: Administrative Review Request,'' dated May 31, 2013.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 38924 (June 28, 2013).

[4] *See* the Appendix attached to this notice for a complete list of the companies for which Petitioner requested a review.

29. Beijing Shouhang Science-Technology Development Company
30. Beijing Youlu Co., Ltd.
31. Beijing Zhongyou TIPO Material & Equipment Co., Ltd.
32. Beiman Special Steel Co., Ltd.
33. Benxi Northern Steel Pipes Co., Ltd.
34. Bohai Equipment New Century Machinery Manufacturing Co., Ltd.
35. Cangzhou City Baohai Petroleum Material Co., Ltd.
36. Cangzhou City Shengdali Machinery Manufacture Co., Ltd.
37. Cangzhou OCTG Company Limited of Huabei Oilfield
38. Cangzhou Qiancheng Steel Pipe Co., Ltd.
39. Cangzhou Ruitai Petroleum Machinery Co., Ltd.
40. Cangzhou Xinxing Seamless Steel Pipe Co., Ltd.
41. Changshu Chengfeng Machinery Manufacturing Co., Ltd.
42. Changshu Lijia Import and Export Co.
43. Changshu Seamless Steel Tube Co., Ltd.
44. Changzhou Bao-Steel Tube Limited-Liability Co.
45. Changzhou Darun Steel Tube Co., Ltd.
46. Changzhou Haitong Petroleum Tube Co., Ltd.
47. Changzhou Heji Engineering Machinery Co., Ltd.
48. Changzhou Heyuan Steel Pipe Company
49. Changzhou Hong Ping Material Supply Co., Ltd.
50. Changzhou Huixiang Petroleum Machinery Co., Ltd.
51. Changzhou Jianzhou Machinery Co., Ltd.
52. Changzhou Shengde Seamless Pipe Co., Ltd.
53. Changzhou Steel Pipe Factory
54. ChangZhou TaoBang Petroleum Tube Co., Ltd.
55. Changzhou Tianda Petroleum Pipe Co., Ltd.
56. Changzhou Tong Xing Steel Tube Co., Ltd.
57. Changzhou Tongchuang Tube Industry Co., Ltd.
58. Changzhou Wujin Furong Aluminum Alloy Profile Factory
59. Changzhou Yuanyang Steel Tube Co., Ltd.
60. Chengde Longcheng Steel Pipe Manufacturing Co., Ltd.
61. Chengdu Heyi Steel Tube Industrial Co., Ltd.
62. Chengdu Wanghui Petroleum Pipe Co. Ltd.
63. Chengdu Zhongyuan Zongji Petroluem Equipment Co., Ltd. (Different/misspelled in both)
64. China East Resources Import & Export Co., Ltd.
65. China Hebei Xinyuantai Steel Pipe Co.
66. China Oilfield Services Limited
67. Chongqing Petroleum Special Pipeline Factory of CNPC Sichuan Petroleum Goods & Material Supply Corp.
68. Chu Kong Steel Pipe Group Co
69. Chuanna Machinery Manufacturing Plant
70. Cloudstone Metal International Limited
71. CNOOC Energy Technology & Services—Pipe Engineering Co.
72. CNOOC Kingland Pipeline Co., Ltd.
73. CNPC Chuanqing Drilling Engineering Co., Ltd./changqing Downhold Technology Operation Co.
74. CNPC Chuanqing Drilling Engineering Co., Ltd./Changqing General Drilling Company
75. CNPC GWDC Drilling Tools Company
76. CORPAC Steel Products, Corp.
77. Da An Heng Rui Production Enquipment Co., Ltd.
78. Da Qing Jing Tai mechancial Manufacturing Co., Ltd.
79. Da'an Petroleum Accessories Factory
80. DADI Petroleum Machinery Co., Ltd. Of Inner Mongolia First Machinery Group Co., Ltd.
81. Dagang Oilfield Group New Century Machinery Manufacturing Co., Ltd.
82. Dalipal Pipe Company
83. Daqing High-Tech Zone Hua Rui Ke Pipe Manufacturing Co.
84. DaQing Ocean Petroleum Technology Development Co., Ltd.
85. Daqing Petroleum Equipment Group
86. Daqing Powerlift Petro-Equipment Group
87. Daqing Seamless Oil Pipe Co., Ltd.
88. Daqing Wanke Oilfield Equipment Manufacturing Co., Ltd.
89. Daquing Powerlift Petro-Equipment Group (Different in letter)
90. Daye Xinye Special Steel Company Limited
91. De Zhou Guang Hua Petroleum Machinery Company Limited
92. De Zhou United Petroleum Machinery Company Limited
93. De Zhou Zhong Xing Petroleum Machinery Co., Ltd.
94. Dexin Steel Tube (China) Co., Ltd.
95. Dezhou Great Wall Petroleum Machinery Co., Ltd.
96. Dezhou Horizon Oil Tools Co., Ltd.
97. Dezhou Longke Petroleum Equipment Co., Ltd.
98. Dingbian County Huayou Trading Company Limited
99. Dong Ying East Petroleum Pipe Co., Ltd.
100. Dongying City Jinyilai Petroleum Machinery Co., Ltd.
101. Dongying City Meiyang Petroleum Pipe & Fittings Co., Ltd.
102. Dongying City Paipu Petroleum Pipe Fitting Co., Ltd.
103. Dongying City YongLiJingGong Petroleum Machinery Manufacturing Co., Ltd.
104. Dongying Heli Petroleum Machinery Company Limited
105. Dongying Rui'ao Industrial Trading Co., Ltd.
106. *Dongying Tianlin Petroleum Equipment Co., Ltd.*
107. Dongying Tianrui Petroleum Science & Technology Co., Ltd.
108. DP-Master Manufacturing Co., Ltd.
109. DRK Oil Tools, Co., Ltd.
110. Engineering Service Company of Great Wall Drilling Engineering Ltd. Of China Petroleum Group
111. Etco (China) International Trading Co., Ltd.
112. Faray Petroleum Steel Pipe Co., Ltd.
113. Field Construction Bohai Equipment Services
114. First Machinery Works of North China Petroleum
115. Freet Petroleum Equipment Co. Ltd. of Shengli Oil Field The Thermal Recovery, Zibo Branch
116. Gaoyou Huaxing Petroleum Pipe Manufacturing Co., Ltd.
117. Ge Steel Resource Ltd.
118. General Machinery Factory of Jilin Petroleum Group Co., Ltd.
119. General Machinery Plant of Shengli Petroleum Administration (Shengli Oil Field Shengli Petroleum Equipment Co., Ltd.)
120. Guangzhou Hongda Steel Tube
121. Guangzhou Iron and Steel
122. Guanzhou Junjia Steel Tube Manufacturer Co., Ltd.
123. Guanzhou Juyi Steel Pipes Company Limited
124. Guanzheng Branch of Tangshan Jidong Petroleum Machinery Company, Ltd.
125. Haerbin City Weilian Mechanical Manufacturing Company Limited
126. Haicheng Northern Steel Pipe Anti-Corrosion Company Limited Haicheng Northern Steel Pipe Co. and Haicheng Beigang Pipe Group
127. Handan Precise Seamless Steel Pipes Co., Ltd.
128. Hangzhou Cogeneration Import & Export Company Limited
129. Hangzhou Zhedong Steel Tube Products Co., Ltd.
130. Hao Ying Qiqihaer in Northeast Special Steel Co., Ltd.
131. Hebei ChangFeng Steel Tube Manufacture Group
132. Hebei Dingsheng Pipe Industry Co., Ltd.
133. Hebei Hongling Seamless Steel Pipes Manufacturing Co., Ltd
134. Hebei Huike Steel Pipe Co., Ltd.
135. Hebei Litonglian Seamless Steel Pipe
136. Hebei Machinery Import and Export Co., Ltd.
137. Hebei Puyang Iron and Steel Company Limited
138. Hebei Tiandixing Pipeline Co., Ltd.
139. Hebei Xinlian Petroleum Machinery Company Limited
140. Hebei Xinyuantai Steel Pipe Co., Ltd.
141. Hebei Yaosheng Petroleum Special Pipe Co., Ltd.
142. Hebei Yi Xin Petroleum Pipe Company Limited
143. Hebei Zewo Steel Pipe Manufacturing Co., Ltd.
144. Hebei Zhong Kuang Steel Pipe Manufacturing Co., Ltd.
145. Hebei Zhongyuan Steel Pipe Manufacturing Co., Ltd. and Zhongyuan Pipeline Manufacturing Co. Ltd.
146. Hefei Ziking Steel Pipe Inc.
147. Heilongjiang Jianlong Iron and Steel Co., Ltd.
148. Heilongjiang North Shuangjia Drilling Tools Co., Ltd.
149. Henan Dongfanlong Machine Manufacture Co., Ltd.
150. Henan Huifeng Pipe Industry Co., Ltd.
151. Henan Nanyang Oilfield Machinery Manufacturing Company Limited
152. Henan Province LiDa Petroleum Pipe Drilling Tools Co., Ltd.

153. Henan Zyzj Petroleum Equipment Co., Ltd.
154. Hengshui Jinghua Steel Pipe Co., Ltd.
155. Hengshui Weijia Petroleum Equipment Manufacture Co., Ltd.
156. Hengyang Hongda Special Steel Tube Co., Ltd.
157. Hengyang Steel Tube (Group) Co., Ltd.
158. Hengyang Valin Steel Tube Co. Ltd. and Hengyang Valin MPM Tube Co., Ltd.
159. HG Tubulars Limited
160. Highgrade Tubular Manufacturing (Tianjin) Co., Ltd.
161. HillHead
162. Hilong Tubular Goods Co., Ltd.
163. HSC (Chengdu) Seamless Steel Pipe Co., Ltd.
164. Hsea Steel Trading Co., Ltd.
165. Huai'an Zhenda Steel Tube Manufacturing Co., Ltd.
166. Hubei OCTG Machinery Co. (First)
167. Hubei Xinyegang Co., Ltd.
168. Hubei Xinyegang Special Tube Co., Ltd.
169. Hubei Zhongshi Special Steel Tubes Co., Ltd.
170. Huizhou Dingjia Trade Co., Ltd.
171. Huludao City Steel Pipe Industrial Co.
172. Huludao Steel Pipe Industrial Co., Ltd.
173. Hunting Energy Services (Wuxi) Co., Ltd.
174. Jiangsu Benqiu Pipe Products Co.
175. Jiangsu Changbao Steel Tube Co., Ltd. and Jiangsu Changbao Precision Tube Co. Ltd.
176. Jiangsu Chengde Steel Tube Share Co., Ltd.
177. Jiangsu Dingxing Petroleum Machinery Co., Ltd.
178. Jiangsu Fanli Steel Pipe Co.
179. Jiangsu Huacheng Industry Group Co., Ltd.
180. Jiangsu Huashun Steel Pipe Co., Ltd.
181. Jiangsu Kailai Steel Tube Co., Ltd.
182. Jiangsu Li'Ao Steel Tube Company Limited
183. Jiangsu Rontech Petroleum Technology Incorporated Company
184. Jiangsu Shined Petroleum Equipment Manufacturing Company Limited
185. Jiangsu Shuguang Oil Tools Limited
186. Jiangsu Sujia Group Co., Ltd.
187. Jiangsu Tenglong Petrochemical Machinery Co., Ltd.
188. Jiangsu Tianyuan Steel Tube Co., Ltd.
189. Jiangsu Valin-Xigang Special Steel Co., Ltd.
190. Jiangsu Wuxi Steel Group
191. Jiangsu Yulong Steel Pipe Co., Ltd.
192. Jiangsu ZhenDa Steel Tube Group Co., Ltd.
193. Jiangsu Zhongye Energy Equipment Manufacture Co., Ltd.
194. Jiangyin Changjiang Oil Special Pipe Manufacture Co., Ltd.
195. Jiangyin Chuangxin Oil Pipe
196. Jiangyin City Changjiang Steel Pipe Co., Ltd.
197. Jiangyin City Seamless Steel Tube Factory
198. Jiangyin Hengyang Petroleum Machinery Company Limited
199. Jiangyin Jieda Shaped Tube Co., Ltd.
200. Jiangyin Jieshun Metal Science & Technology Co., Ltd.
201. Jiangyin Long-Bright Drill Pipe Manufacture Co., Ltd.
202. Jiangyin Yashen Petroleum Pipe Co., Ltd.
203. Jiangyin Yueyue Chao Steel Pipe Manufacture Co., Ltd.
204. Jiangyin Yuhao Petroleum Pipe Co., Ltd.
205. Jianhu Lichange Valve Co., Ltd.
206. Jilin Baotong Petroleum Steel Pipe Company Limited
207. Jilin Qianyuan Steel Pipe Co., Ltd.
208. Jilin Sky Loong Industry Co., Ltd.
209. Jinan Iron and Steel Company Jigang Group Co., Ltd.
210. Jinxi Industry Group Co., Ltd.
211. Jinxi Steel Pipe Co., Ltd. of Lingyuan Iron and Steel Group
212. Jinxi Steel Pipe Xinjiang Co., Ltd.
213. Jiuquan Iron and Steel Group (JISCO)
214. Julong Steel Pipe Co., Ltd.
215. Laiwu Iron and Steel Corporation
216. Langfang OTSMAN Special Petroleum Pipe Manufacture Company Limited
217. Liangshan Steel Pipe Company Limited
218. Liaoche Thermal Recovery Machinery Branch of CNPC Bohai Equipment Manufacturing Co., Ltd.
219. Liaocheng Jialong Tube Manufacture Company Limited
220. Liaocheng Jingxin Seamless Steel Pipe Manufacturing Co., Ltd.
221. Liaocheng Xinpengyuan Metal Manufacture Co., Ltd.
222. Liaoning Dongyu Oil Tubular Goods Company, Ltd.
223. Liaoning Foo May Oilfield Services Co., Ltd.
224. Liaoning Large-scale Steel Pipe Co., Ltd.
225. Liaoning Northern Steel Pipe Co., Ltd.
226. Liaoning ShenYu Oil Pipe Manufacture Company Limited
227. Liaoyang Seamless Oil Pipe Co., Ltd.
228. Linggang Beipiao Steel Pipe Co., Ltd.
229. Lingyuan Iron & Steel Company Limited
230. Linyi Jinzhengyang Seamless Steel Pipe Co., Ltd.
231. Linyi Sanyuan Steel Pipe Industry Company Limited
232. Linyi Yinlong Steel Tube Co., Ltd.
233. Linzhou Fengbao Pipe Industry Co., Ltd.
234. Liuzhou Iron and Steel
235. M&M Steel Pipe Co., Ltd.
236. Machinery Factory of Jilin Petroleum Group Co., Ltd.
237. Machinery Factory of Tuha Petroleum
238. MCC Liaoning Dragon Pipe Industries Company Limited
239. Mechanical Factory of CNPC Qinghai Oilfield Company
240. Meihekou City Hongye Seamless Steel Pipe Co., Ltd.
241. Mercadex B.V.
242. MSP/Drilex, Inc.
243. Nantong Hengte Tube Co., Ltd.
244. Nantong Petroleum Machine Manufacturing Co., Ltd.
245. Nantong Yongda Pipe Industry Incorporated Company
246. Nengyang Hongling Petroleum Pipe Co., Ltd.
247. NHIC Antonoil Machinery Manufacturing Co., Ltd.
248. Ning Xia D.M.S. OCTG Company Limited
249. Ningbo Hengfa Steel Tube Co., Ltd.
250. Ningxia Daimus Petroleum Steel Pipe Co., Ltd., Tianjin Branch
251. Norms-ShenZhen HaiYou Mechanical Equipment Company
252. North China Petroleum Steel Pipe Co., Ltd.
253. North China Petroleum Steel Pipe Co., Ltd. Yangzhou Subsidiary Company
254. Oilfield Services & Supplies (Tianjin) Co., Ltd.
255. Pancheng Yihong Pipe Company Limited
256. Pangang Group Beihai Steel Pipe Corporation (PGBH)
257. Pangang Group Chengdu Iron & Steel Co., Ltd.
258. Pangang Group Chengdu Steel & Vanadium Co., Ltd.
259. Panjin ChangTai Petroleum Tubular Co., Ltd.
260. Panjin Liaohe Oilfield Jinhuan Company Corporation Ltd.
261. Panjin Renhe Pipe Co., Ltd.
262. Panjin Xinhua Drilling Machinery Manufacture Co., Ltd.
263. Panshi City Great Wall Mechanical Factory
264. Panyu Chu Kong Steel Pipe Co., Ltd.
265. Petroleum Machinery Factory of Bohai Petroleum Manufacturing Co., Ltd.
266. PetroMaterials (Cangzhou) Co., Ltd.
267. Pipe and Tooling Center, Sinopec Southwest Company
268. Pipe & Tools of No.2 Drilling Technical Company of Da Qing CN
269. Precision Pipe Manufacturing Branch of Liaoning Tianyi Industry Company
270. PuYang BaoLiTong Petroleum Machinery Co., Ltd.
271. Puyang City Huang Jin-Driliing Parts Processing Co., Ltd.
272. Puyang City Shuangfa Industry
273. Puyang Heli Drilling Machinery Processing Co., Ltd.
274. Puyang Xinyu Petro-chemical Machinery Co., Ltd.
275. Puyang Zhongshi Group Co., Ltd.
276. Qingdao Kehua Petroleum Machinery Co., Ltd.
277. Qiqihaer Haoying Iron & Steel Co of Northeast Special Steel Group
278. Rizhao Steel Holding Group Co., Ltd.
279. RiZhao ZhongShun Steel Pipe Manufacture Company Limited
280. RongSheng Machinery Manufacture Ltd.
281. Seamless Tube Mill of Baotou Steel Union
282. Shaanxi Jiabao Petroleum Machine Manufacture Co., Ltd.
283. Shaanxi Qindong Tubular Goods Manufacturing Co., Ltd.
284. Shaanxi Yanchang Petroleum Equipment Manufacturing Co., Ltd.
285. Shaanxi Yangchang Petroleum Material Company
286. Shandong Continental Petroleum Equipment Co., Ltd.
287. Shandong Dongbao Steel Pipe Co., Ltd.
288. Shandong Dongying Liyuan Pipe Industry Group Co., Ltd.
289. Shandong East China Petroleum Pipes & Drilling Tools Co., Ltd.

290. Shandong East Oil Petroleum Equipment Co., Ltd.
291. Shandong Huabao Steel Pipe Co., Ltd.
292. Shandong Huitong Steel Tube Making Co., Ltd.
293. Shandong Jialong Petroleum Pipe Manufacture Co., Ltd.
294. Shandong Liaocheng Baotong Steel Tube Manufacture Co., Ltd.
295. Shandong Liaocheng Shenhao Metal Product Co., Ltd.
296. Shandong Liaocheng ZGL Metal Manufacturing Co., Ltd.
297. Shandong Luhai Petroleum Equipment Co., Ltd.
298. Shandong Luxing Steel Pipe Co., Ltd.
299. Shandong Mingzhu Petroleum Equipment Co., Ltd.
300. Shandong Molong Petroleum Machinery Co., Ltd.
301. Shandong Nine-Ring Petroleum Machinery Co., Ltd.
302. Shandong Province Coalfield Geologic Drilling Tools Factory
303. Shandong Province Jin Shun Steel Product Limited Company
304. Shandong Runhe Tube Industry Co., Ltd.
305. Shandong Shengdong Oilfield Machinery Co., Ltd.
306. Shandong Shengli Tongxing Petroleum Pipe Manufacture Co., Ltd.
307. Shandong Shengyou Oil Drilling & Production Machinery Limited Company
308. Shandong Shouguang JuNeng Special Steel Co., Ltd.
309. Shandong Taifeng Steel Industry Co., Ltd.
310. Shandong Xinchi Steel Pipe Manufacture Co., Ltd.
311. Shandong Xinji Yiming Machinery Co., Ltd.
312. Shandong Zhao Yu Petroleum Pipe Manufacture Co., Ltd.
313. Shandong Zhongli Steel Pipe Co., Ltd.
314. Shandong Zhongye Petroleum Machinery Co., Ltd
315. ShanDong ZhongZheng Steel Pipe Manufacturing Co., Ltd.
316. Shanghai Baochen Oil Pipeline Materials Company Limited
317. Shanghai Baodi Petroleum Pipe Development Co., Ltd.
318. Shanghai Baofu Steel Pipe Co., Ltd.
319. Shanghai Baoshun Steel Tube Co., Ltd.
320. Shanghai Baoyan Special Steel Pipe Co., Ltd.
321. Shanghai Baoyi Industrial Company
322. Shanghai Fanzhenglong Steel Tube Co., Ltd.
323. Shanghai Hilong Drill Pipe Co., Ltd.
324. Shanghai Hongshun Tube Manufacturing Co., Ltd.
325. Shanghai Kangxin Oil Pipe Manufacturing Co., Ltd.
326. Shanghai Metals & Minerals Import & Export Corporation
327. Shanghai Mingsheng Industrial Co., Ltd.
328. Shanghai STARSE Petroleum Equipment Co., Ltd.
329. Shanghai Tianhe Oil Engineering Co., Ltd.
330. Shanghai W.M Threading Co., Ltd.
331. Shanghai Yuanxin Tube Co., Ltd.
332. Shanghai Yueyuechao Manufacture Tube Co., Ltd.
333. Shanghai Yuezhou Steel Co., Ltd.
334. Shanghai Zhongyou TIPO Steel Pipe Co., Ltd.
335. Shanxi Dehui Seamless Steel Pipe Co., Ltd.
336. Shanxi Guolian Pipe Industry Group Co., Ltd.
337. Shanxi Hongli Steel Tube Share Company Limited
338. Shanxi Taigang Stainless Steel Tubes & Pipes Co. Ltd.
339. Shanxi Yida Petroleum Manufacture Co., Ltd.
340. Shanxi Yuci Guolian Steel Pipe Co., Ltd.
341. Shelfoil Petroleum Equipment & Services Co., Ltd.
342. Shengil Fanland Petroleum Equipment Co., Ltd.
343. Shengil Oil Field Shengli Power Machinery Group Co., Ltd.
344. Shengil General Engineering (The Thermal Recovery Equipment Manufactory of Shengli General Engineering)
345. Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd.
346. Shengli Oil Field Highland Petroleum Equipment Co., Ltd.
347. Shengli Oil Field TianFeng Science, Industry & Trade Steel Structure Co., Ltd.
348. Shengli Oil Field Whuhua Industry Development Co., Ltd.
349. Shengli Oilfield Shengji Petroleum Equipment Co., Ltd.
350. Shengli Petroleum Administration General Machinery Plant
351. Shengli Petroleum Equipment Co., Ltd.
352. Shenyang Dongming Seamless Steel Tube Co., Ltd.
353. Shenyang Special Type Seamless Steel Tube Co., Ltd.
354. Shenzhen Renjunfeng Enterprise Co., Ltd.
355. Shenzhen Weisheng I.T.S. Petroleum Tubular & Equipment Co., Ltd.
356. Siano (Beijing) Steel Co., Ltd.
357. Sichuan ChangCheng Steel Tube Co., Ltd.
358. Sichuan ChengJiWeiYe Steel Pipe Co., Ltd.
359. Sichuan Huagong Petroleum Steel Pipe Co., Ltd.
360. Sichuan Jingshi Engineering Technology Co., Ltd.
361. Songyuan Daduo Oilfield Accessory Industry Co., Ltd.
362. Songyuan Seamless Oil Pipe Co., Ltd.
363. SPAT Steel International (H.K.) Limited
364. Steel Pipe Plant Of Wisco Wuhan Jiangbei Iron And Steel Co., Ltd.
365. Steel Pipe Works of North China Petroleum
366. Steelforce Far East Ltd.
367. Stiletto (HK) Limited
368. Suns Steel International (Group) Co., Ltd., Shanghai Suns Steel International Trading Ltd., and Shanghai Suns Steel International Ltd.
369. Suzhou Baoxin Seamless Steel Tube
370. Suzhou Friend Tubing and Casing Pipe Co., Ltd.
371. Suzhou Rainbow Huading Chimney Manufacturing
372. Suzhou Seamless Steel Tube Works and Suzhou Shuangjin Group Corporation
373. Suzhou Sino Import and Export Co., Ltd.
374. Tai'an Jiecheng Equipment Installation Co., Ltd.
375. Taicang Xinbaoyi Steel Pipe Manufacture Co., Ltd.
376. Taizhou Chengde Steel Tube Co., Ltd.
377. Taizhou Elite Drilling Pipe Co., Ltd.
378. Taizhou Shuangyang Precision Seamless Steel Tube Co., Ltd.
379. Tangshan Jointer Petroleum Pipe Manufacture Co., Ltd.
380. Tangshan Sanjin Mingsheng Industry Development Co., Ltd.
381. Tangshan Wenfeng Qiyuan Pipe Industry Co., Ltd.
382. The Freet Group
383. The Machinery Plant, Tuha Oilfield Company
384. Thermal Recovery Equipment Manufacturer of Shengli Oil Field Freet Petroleum Equipment Co., Ltd.
385. Tian Jin Costrength Petrol China Machinery Co., Ltd.
386. Tianhe Oil Group Hifeng Petroleum Equipment Co., Ltd.
387. Tianjin Amergy (Meineng) Fittings Co., Ltd.
388. Tianjin Bond Oil Steel Pipe Manufacturing Co., Ltd.
389. Tianjin Boyu Steel Pipe Co., Ltd.
390. Tianjin City Gang Xin Seamless Pipe Industry Company
391. Tianjin City Jinghai County Baolai Industrial and Trade Co.
392. Tianjin City Juncheng Seamless Tube Company Limited
393. Tianjin City Mingren Metallic Products Co., Ltd.
394. Tianjin City Tian Yi Seamless Steel Tube Company Limited
395. Tianjin Coupling Heat Treatment Company Limited
396. Tianjin Debang Petroleum Pipe Manufacturing Co., Ltd.
397. Tianjin DeHua Petroleum Equipment Manufacturing Company Limited
398. Tianjin Delisi Steel Tube Products Co., Ltd.
399. Tianjin Denuo Petroleum Tube Co., Ltd.
400. Tianjin Evergrand Oil Pipes Co., Ltd.
401. Tianjin Feng Yi Da General Machinery Company Limited
402. Tian-Jin Holly Land Pipe Co., Ltd.
403. Tianjin Hong Gang Yuan Oil Equipment Manufacturing Co., Ltd.
404. Tianjin Hua Xin Premium Connections Pipe Co., Ltd.
405. Tianjin Huilitong Steel Tube Co., Ltd.
406. Tianjin Jinggong Petroleum Pipe Fittings Co., Ltd.
407. Tianjin Jingtong Seamless Steel Pipe Co., Ltd.
408. Tianjin Jinyingda Plastic Product Co., Ltd.
409. Tianjin Jinyuan Machinery Manufacture Co., Ltd.
410. Tianjin Lida Steel Pipe Group Co., Ltd.
411. Tianjin Lifengyuanda Steel Group Co., Ltd.
412. Tianjin Liqiang Steel Pipe Co.
413. Tianjin Master Seamless Steel Pipe Co., Ltd.

414. Tianjin Minghai Petroleum Tubular Co., Ltd.
415. Tianjin Opka Oil Pipe Co., Ltd.
416. Tianjin Pipe Group Corporation
417. Tianjin Pipe Industry Development Company
418. Tianjin Pipe International Economic & Trading Corp.
419. Tianjin Rainbox Steel Pipe Product Corporation
420. Tianjin Ring-Top Petroleum Manufacture Co., Ltd.
421. Tianjin Seamless Steel Pipe Plant
422. Tianjin SERI Machinery Equipment Corporation Limited
423. Tianjin Shengcaiyuan Steel Trading Co., Ltd.
424. Tianjin Shenzhoutong Steel Pipe Co. Ltd.
425. Tianjin Shuangjie Pipe Manufacturing Co., Ltd.
426. Tianjin Tiangang Special Petroleum Pipe Manufacturer Co., Ltd.
427. Tianjin Tiansheng Petroleum Pipe Manufacturing Co., Ltd.
428. Tianjin Tianye Seamless Steel Pipe Plant Ltd.
429. Tianjin Top Connect Manufacturing Co., Ltd.
430. Tianjin TPCO & TISCO Welding Pipe Corporation
431. Tianjin Tubular Goods Machining Co., Ltd.
432. Tianjin United Steel Pipe Co (UNISTEEL)
433. Tianjin Walt Pipe Co., Ltd.
434. Tianjin Xingyuda Steel Pipe Co., Ltd.
435. Tianjin Zhongshun Industry Trade Co., Ltd.
436. TianJin ZhongShun Petroleum Steel Pipe Co., Ltd.
437. Tianjing Boyu Steel Tube Co., Ltd.
438. Tieling Yida Petroleum Machinery Manufacture Co., Ltd.
439. TLD International
440. Tonghua Iron & Steel Group Panshi Seamless Steel Tube Company Limited
441. TPCO Yuantong Pipe and Tube Corporation Limited
442. Tuha Petroleum Machinery
443. UNI Tube Ltd.
444. United Offshore Construction Co., Ltd. CONHW, Zhanjiang
445. Uno-steel (Jiangyin) Drilling Products Manufacturing Limited
446. Weifang East Pipe Industry Technical Co., Ltd.
447. Weifang Weierds Steel Pipe Co., Ltd.
448. Westcan Oilfield Supply Ltd.
449. WSP Holding Limited
450. Wuhan Seamless Oil Steel Tube Co., Ltd.
451. Wuhan Wugang Group Hanyang Steel Factory
452. Wuxi Baoda Petroleum Special Pipe Manufacture Co., Ltd.
453. Wuxi City DongQun Steel Tube Co.
454. Wuxi City Jianhong Metal Products Co., Ltd.
455. Wuxi DeRui Seamless Steel Pipe Co., Ltd.
456. Wuxi Dexin Steel Pipe Co., Ltd.
457. Wuxi Dingyuan Precision Cold-Drawn Steel Pipe Co.
458. Wuxi Eastsun Petroleum Tubular Manufacturing Co., Ltd.
459. Wuxi Endless Petro Geo-Equipment Co., Ltd.
460. Wuxi Erquan Special Steel
461. Wuxi Fanyong Liquid Presses Tube Company Limited
462. Wuxi Fastube Dingyuan Precision Steel Pipe Co., Ltd.
463. Wuxi Fastube Industry Co.
464. Wuxi Free Petroleum Tubulars Manufacture Co., Ltd.
465. Wuxi Gedemei Oil Machinery Equipment Manufacture Co., Ltd.
466. Wuxi Horizon Petroleum Special Pipe Manufacture Company Limited
467. Wuxi Huaxin Petroleum Machine Co., Ltd.
468. Wuxi Huayou Special Steel Co., Ltd.
469. Wuxi Huazin Petroleum Machine Company Limited
470. Wuxi Hui Long Wufeng Steel Tube Limited Company
471. Wuxi Jiangnan High Precision Pipe Co., Ltd.
472. Wuxi Jinding Oil Pipe Fittings Co., Ltd.
473. WuXi OuLong Special Steel Pipe Co., Ltd.
474. Wuxi Precese Special Steel Co., Ltd.
475. Wuxi Ruiyuan Special Steel Pipe Company Limited
476. Wuxi Runfeng Special Pipe Co., Ltd.
477. Wuxi Seamless Oil Pipe Co., Ltd.
478. Wuxi SP Steel Tube Manufacturing Co. Ltd.
479. Wuxi Special Steel Material Co., Ltd.
480. Wuxi Sunshine Textile Science and Technology Co., Ltd.
481. Wuxi Xijin Petroleum Equipment Fittings Manufacturing Co. Ltd.
482. Wuxi Xingya Seamless Steel Tube
483. Wuxi Zhen Dong Steel Pipe Works
484. Wuxi Zhenda Special Steel Tube Manufacturing Co., Ltd. and Wu Xi Zhen Da Special Steel Tube Manufacturing Co., Ltd.
485. X'ian Hangwei Petrochemical Equipment Co., Ltd.
486. Xi'an Changqing Tianhe Petroleum Machinery Co., Ltd.
487. Xigang Seamless Steel Tube Co., Ltd.
488. XiNing Special Steel Co., Ltd.
489. Xinjiang Petro Adminstration Bureau Machinery Manufacture General Company
490. Xinjiang Ster Petroleum Tubes and Pipes Manufacturing Co., Ltd.
491. Xinjiang Younaite Petroleum Steel Tube Co., Ltd.
492. Xinxiang Central Plain Petroleum and Chemical Machine Manufacturing Co., Ltd.
493. Xinxing Ductile Iron Pipes Co., Ltd.
494. Xinyuantai Steel Pipe Group Co., Ltd.
495. Xuzhou E&R Petroleum Equipment Co., Ltd.
496. Xuzhou Guanghuan Steel Tube (Group) Co., Ltd.
497. Xuzhou Guanghuan Steel Tube Co., Ltd.
498. Xuzhou Oilfield Equipment Co., Ltd.
499. Xuzhou Taifeng Oilwell Products Co., Ltd.
500. Yan'an JiaSheng Petroleum Machinery Co., Ltd.
501. Yan'an Shoushan Mechanical and Production Engineering Technology Co., Ltd.
502. Yancheng Steel Tube Co., Ltd.
503. Yancheng Teda Special Pipe Co., Ltd.
504. Yangxin Universal Electromechanical Equipment Co., Ltd.
505. Yangzhou BaoRuiDe Petroleum Machinery Co., Ltd.
506. Yangzhou Chengde Steel Tube Co., Ltd..
507. Yangzhou Chicheng Petroleum Machinery Co., Ltd.
508. Yangzhou Lontrin Steel Tube Co., Ltd.
509. Yangzhou Sinopetro Superbskill Machine Co., Ltd.
510. Yantai KIYOFO Seamless Steel Pipe Company Limited
511. Yantai Steel Pipe Co., Ltd. of Laiwu Iron & Steel Group
512. Yantai Yuanhua Steel Tubes Company Limited
513. Yieh Corporation
514. YingKou OuYang Metal Manufacturing Co., Ltd.
515. Zhangjiagang HengFeng Oil Pipe & Part Co., Ltd.
516. ZhangJiaGang ZhongYuan Pipe-Making Co.
517. Zhangjiakou Haite Steel Pipe Co., Ltd.
518. Zhangzhou Stronghold Steel Works Co., Ltd.
519. Zhejiang Guobang Steel Co., Ltd.
520. Zhejiang Jianli Co., Ltd.
521. Zhejiang JiuLi Hi-Tech Metals Co., Ltd.
522. Zhejiang Kingland Pipe Industry Co., Ltd.
523. Zhejiang Minghe Steel Pipe Co., Ltd.
524. Zhejiang Seamless Steel Tube Co., Ltd. and Zhejiang Gross Seamless Steel Tube Co. Ltd.
525. Zhongshi Special Steel Tubes Co., Ltd.
526. Zhongyuan Pipeline Manufacturing Co., Ltd.
527. Zibo Hongyang Petroleum Equipment Co., Ltd.
528. Zibo Pipe Manufacturing
529. ZYZJ Petroleum Equipment Co., Ltd.

[FR Doc. 2013–29343 Filed 12–6–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–998]

1,1,1,2-Tetrafluoroethane From the People's Republic of China: Initiation of Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 9, 2013.

FOR FURTHER INFORMATION CONTACT: Frances Veith or Joshua Startup at (202) 482–4295, (202) 482–5260, respectively, 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.

SUPPLEMENTARY INFORMATION:

The Petition

On October 22, 2013, the Department of Commerce (''Department'') received an antidumping duty (''AD'') petition concerning imports of 1,1,1,2-Tetrafluoroethane (''tetrafluoroethane'') from the People's Republic of China (''PRC'') filed in proper form on behalf of Mexichem Fluor, Inc. (''Petitioner'').[1] Petitioner is a domestic producer of tetrafluoroethane. On October 25 and November 6, 2013, the Department requested additional information and clarification of certain areas of the Petition, and on October 29 and November 8, 2013, respectively, Petitioner filed a response to each request.[2] On November 7, 2013, Petitioner filed a response to the Department's November 6, 2013, request for additional information and clarification of the scope of the Petition.[3]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (''the Act''), Petitioner alleges that imports of tetrafluoroethane from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioner in support of its allegations.

The Department finds that Petitioner filed this Petition on behalf of the domestic industry because Petitioner is an interested party as defined in section 771(9)(C) of the Act. The Department also finds that Petitioner has demonstrated sufficient industry support with respect to the initiation of the AD investigation that Petitioner is requesting.[4]

Period of Investigation

Pursuant to 19 CFR 351.204(b)(1), because the Petition was filed on October 22, 2013, the period of investigation (''POI'') is April 1, 2013, through September 30, 2013.[5]

Scope of the Investigation

The product covered by this investigation is tetrafluoroethane from the PRC.[6]

Comments on the Scope of the Investigation

During our review of the Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations,[7] we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by December 23, 2013, 5:00 p.m. Eastern Time.[8] All comments must be filed on the record of the AD investigation, as well as the concurrent PRC countervailing duty (''CVD'') investigation. The period of scope comments is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Comments on the Product Characteristics for Antidumping Duty Questionnaire

The Department requests comments from interested parties regarding the appropriate physical characteristics of tetrafluoroethane to be reported in response to the Department's AD questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors and costs of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe tetrafluoroethane, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, we must receive comments on product characteristics by December 23, 2013. Rebuttal comments must be received by December 30, 2013. All comments and submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).

Filing Requirements

All submissions to the Department must be filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by 5:00 p.m. on the due date.[9] Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the

[1] *See* ''Petition for the Imposition of Antidumping Duties on Imports of 1,1,1,2-Tetrafluoroethane from the People's Republic of China,'' dated October 22, 2013 (''Petition'').

[2] *See* Petitioner's October 29, 2013, filing titled, ''1,1,1,2-Tetrafluoroethane from the People's Republic of China: Response to Antidumping Supplemental Questionnaire,'' (''AD Supplement to the Petition''); *see also* Petitioner's October 29, 2013, filing titled, ''1,1,1,2-Tetrafluoroethane from the People's Republic of China: Response to General Issues Supplemental Questionnaire,'' (''General Issues Supplement''), and Petitioner's November 8, 2013, filing, titled ''1,1,1,2-Tetrafluoroethane from the People's Republic of China: Response to Second Antidumping Supplemental Questionnaire.''

[3] *See* Petitioner's November 7, 2013, filing titled, ''1,1,1,2-Tetrafluoroethane from the People's Republic of China: Response to Scope Questionnaire.''

[4] *See* the ''Determination of Industry Support for the Petitions'' section, below.

[5] *See* 19 CFR 351.204(b)(1).

[6] *See* Appendix I of this notice for a full description of the scope of this investigation.

[7] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[8] Scope comments are typically due 20 calendar days from the signature date of this notice, which in this case falls on a Sunday. Department practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See* Notice of Clarification: *Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533, 24533 (May 10, 2005).

[9] 19 CFR 351.303(b)(1).

domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[10] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[11]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that tetrafluoroethane, as defined in the scope of the investigation, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[12]

On November 1, 2013, the Department extended the initiation deadline by 20 days to poll the domestic industry in accordance with section 732(c)(4)(D) of the Act, because it was ''not clear from the Petitions whether the industry support criteria have been met . . . .'' [13]

On November 7, 2013, we issued polling questionnaires to all known producers of tetrafluoroethane identified in the Petition and by the ITC. We requested that each company complete the polling questionnaire and certify its response by the due date specified in the cover letter to the questionnaire.[14] The questionnaire stated that, if a company did not take a position with respect to the Petition (either support, oppose, or no opinion), we would presume the company has no opinion.

Our analysis of the data received in the polling questionnaire responses indicates that the domestic producers of tetrafluoroethane which support the Petition account for at least 25 percent of the total production of the domestic like product and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[15] Accordingly, the Department determines that the industry support requirements of section 732(c)(4)(A) of the Act have been met. Therefore, the Department determines that Petitioner filed this Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the AD investigation that it is requesting the Department initiate.[16]

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (''NV''). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[17]

Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenues; decline in U.S. sales; and decline in financial performance.[18] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[19]

Allegation of Sales at Less Than Fair Value

The following is a description of the allegation of sales at less than fair value upon which the Department has based its decision to initiate investigations of imports of tetrafluoroethane from the PRC. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the AD Initiation Checklist.

Export Price

Petitioner calculated export price (''EP'') based on one price quote for Chinese tetrafluoroethane provided by a domestic distributor of PRC chemical products, as identified in affidavits regarding U.S. price.[20] Based on the price quote's delivery terms, Petitioner deducted from this price the charges and expenses associated with exporting and delivering the product to the U.S.

[10] *See* section 771(10) of the Act.

[11] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[12] *See* Antidumping Duty Investigation Initiation Checklist: 1,1,1,2-Tetrafluoroethane from the People's Republic of China (''AD Initiation Checklist'') at Attachment II, Analysis of Industry Support for the Petitions Covering 1,1,1,2-Tetrafluoroethane from the People's Republic of China (''Attachment II''). This checklist is dated concurrently with this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit (''CRU''), Room 7046 of the main Department of Commerce building.

[13] *See Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping Duty and Countervailing Duty Petitions: 1,1,1,2-Tetrafluoroethane From the People's Republic of China,* 78 FR 66894, 66895 (November 7, 2013).

[14] For a detailed discussion of the responses received, *see* AD Initiation Checklist at Attachment II. The polling questionnaire and questionnaire responses are on file electronically via IA ACCESS and can also be accessed through the CRU.

[15] *See* AD Initiation Checklist at Attachment II.

[16] *Id.*

[17] *See* General Issues Supplement at 5–6 and Exhibit 5.

[18] *See* Volume I of the Petition, at 4–13 and Exhibits I–5 and I–8 through I–10; *see also* General Issues Supplement, at 5–6 and Exhibits 4 and 5.

[19] *See* AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering 1,1,1,2-Tetrafluoroethane from the People's Republic of China.

[20] *See* AD Initiation Checklist at 6; *see also* Volume II of the Petition, at 4 and Exhibit II–7; *see also* AD Supplement to the Petition, at 2–3 and Exhibit 5.

customer (*e.g.,* insurance and freight, U.S. duty and U.S inland freight).[21] Petitioner made no other adjustments.[22]

Normal Value

Petitioner claims that the PRC is a non-market economy (''NME'') country, and that this designation remains in effect as of the date of this Petition.[23] The presumption of NME status for the PRC has not been revoked by the Department and, therefore, in accordance with section 771(18)(C)(i) of the Act, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product for the investigation is appropriately based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and granting of separate rates to individual exporters.

Petitioner contends that Thailand is the appropriate surrogate country for the PRC because: (1) It is at a level of economic development comparable to that of the PRC, (2) it is a significant producer of comparable merchandise relative to the tetrafluoroethane that is the subject of the petition, and (3) the data available from Thailand for valuing factors of production are available and reliable.[24] Based on the information provided by Petitioner, we conclude that it is appropriate to use Thailand as a surrogate country for initiation purposes.[25] After initiation of this investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production (FOPs) within 30 days before the scheduled date of the preliminary determination.[26]

Petitioner calculated NV using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. In calculating NV, Petitioner based the quantity of each of the inputs used to manufacture the subject merchandise on its own consumption experience which, Petitioner contends, to the best of its knowledge, is similar to the consumption of PRC producers.[27]

Petitioner valued the factors of production using reasonably available, public surrogate country data, specifically, Thai import data from the Global Trade Atlas (''GTA'') for the period February through July 2013, the most recent six-month period for which data were available.[28] Petitioner excluded all import values from countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies and from countries previously determined by the Department to be NME countries. Further, Petitioner made currency conversions, where applicable, based on the POI-average Thai Baht/U.S. dollar exchange rates.[29] The Department determines that the surrogate values used by Petitioner are reasonably available and, thus, are acceptable for purposes of initiation.

Petitioner determined direct materials costs from Thai import data from the GTA.[30] Petitioner applied certain conversion factors to align the units of measure with its own factors of production.[31] Petitioner calculated financial ratios (*i.e.,* factory overhead expenses, selling, general, and administrative (''SG&A'') expenses, and profit) based on the most recent audited financial statements of Thai Central Chemical Public Company Limited, a Thai manufacturer of comparable merchandise (*i.e.,* chemical fertilizers).[32]

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of tetrafluoroethane from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NV in accordance with section 773(c) of the Act, Petitioner calculated the estimated dumping margin to be 198.52 percent with respect to imports of tetrafluoroethane from the PRC.[33]

Initiation of Antidumping Duty Investigation

Based on our examination of the Petition on tetrafluoroethane from the PRC, the Department finds that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of tetrafluoroethane from the PRC are being, or likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will issue our preliminary determination no later than 140 days after the publication date of this initiation.

Respondent Selection and Quantity and Value Questionnaire

In accordance with our standard practice for respondent selection in AD investigations involving NME countries, we intend to issue quantity and value questionnaires to each potential respondent, and will base respondent selection on the responses received. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Enforcement and Compliance Web site (*http://www.trade.gov/enforcement/news.asp*). Exporters and producers of tetrafluoroethane from the PRC that do not receive quantity and value questionnaires via mail may still submit a quantity and value response, and can obtain a copy from the Enforcement and Compliance Web site. The quantity and value questionnaire must be submitted by all PRC exporters/producers by no later than December 16, 2013. All quantity and value questionnaires must be filed electronically using IA ACCESS.

Separate Rates

In order to obtain separate rate status in an NME AD investigation, exporters and producers must submit a separate rate application.[34] The specific requirements for submitting the separate rate application in the PRC investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://trade.gov/enforcement/ia-highlights-and-news.html* on the date of publication of this initiation notice in the **Federal Register**. The separate rate application will be due 60 days after the publication of this initiation notice. For exporters and producers who submit a separate rate status application and have been selected as mandatory respondents, these exporters and producers will no longer be eligible for

[21] *Id.*

[22] *Id.*

[23] *See* Volume II of the Petition at 1–2.

[24] *Id.* at 1–3 and Exhibits II–3 through and II–6.

[25] *See* AD Initiation Checklist.

[26] *See* 19 CFR 351.301(c)(3)(i). Note that this is the revised regulation published on April 10, 2013. *See http://www.gpo.gov/fdsys/pkg/CFR-2013-title19-vol3/html/CFR-2013-title19-vol3.htm.*

[27] *See* Volume II of the Petition at 2 and Exhibits II–2 and II–6.

[28] *See* Volume II of the Petition at 3 and Exhibit II–3.

[29] *See* Volume II of the Petition at Exhibit II–4; *see also* AD Supplement to the Petition at 4–5 and Exhibit 2.

[30] *See* Volume II of the Petition at Exhibit II–3.

[31] *Id.* at Exhibit II–2.

[32] *See* AD Supplement to Petition at 5.

[33] *Id.* at Exhibit 6, AD Margin.

[34] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005) (Separate Rates and Combination Rates Bulletin), available on the Department's Web site at *http://enforcement.trade.gov/policy/*).

consideration for separate rate status unless they respond to all parts of the Department's AD questionnaire as mandatory respondents. The Department requires that the PRC respondents submit a response to the separate rate application by the deadline referenced above in order to receive consideration for separate rate status.

Use of Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[35]

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the Government of the PRC via IA ACCESS. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters to be satisfied by the provision of the public versions of the Petition to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of tetrafluoroethane from the PRC are materially injuring, or threatening material injury to, a U.S. industry.[36] A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

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 AD and CVD proceedings: (1) The definition of factual information (19 CFR 351.102(b)(21)), and (2) 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 proceeding segments initiated on or after May 10, 2013, and thus are applicable to this investigation. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information for this investigation.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in AD and CVD proceedings. 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 section 19 CFR 351.408(c), or to measure the adequacy of remuneration under section 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 CBP 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. Review *Extension of Time Limits; Final Rule,* available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this segment.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[37] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD or CVD investigations or proceedings initiated on or after August 16, 2013,

[35] *See* Separate Rates and Combination Rates Bulletin at 6 (emphasis added).

[36] *See* section 733(a) of the Act.

[37] *See* section 782(b) of the Act.

including this investigation.[38] The formats for the revised certifications are provided at the end of the *Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO 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 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 2, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The product subject to this investigation is 1,1,1,2-Tetrafluoroethane, R–134a, or its chemical equivalent, regardless of form, type, or purity level. The chemical formula for 1,1,1,2-tetrafluoroethane is CF_3-CH_2F, and the Chemical Abstracts Service (''CAS'') registry number is CAS 811–97–2.

1,1,1,2-Tetrafluoroethane is sold under a number of trade names including Klea 134a and Zephex 134a (Mexichem Fluor); Genetron 134a (Honeywell); Suva 134a, Dymel 134a, and Dymel P134a (DuPont); Solkane 134a (Solvay); and Forane 134a (Arkema). Generically, 1,1,1,2-tetrafluoroethane has been sold as Fluorocarbon 134a, R–134a, HFC–134a, HF A–134a, Refrigerant 134a, and UN3159.

Merchandise covered by the scope of this investigation is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 2903.39.2020. Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2013–29344 Filed 12–6–13; 8:45 am]

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[38] *See Certifications of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*'').

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine From the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review; 2012

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 23, 2013, the Department of Commerce (the Department) published its *Preliminary Rescission* for the new shipper review of the antidumping duty order on glycine from the People's Republic of China (PRC) covering the period of review March 1, 2012, through August 31, 2012, for Hebei Donghua Jiheng Fine Chemical Company, Ltd. (Donghua Fine Chemical).[1] For these final results, we continue to find that, because Donghua Fine Chemical appears to be affiliated with PRC-companies that have had prior shipments of subject merchandise to the United States, it has therefore failed to certify to its first U.S. entry, U.S. shipment, and U.S. sale, as required under 19 CFR 351.214(b)(2)(iv)(A) and (C). We also continue to find that Donghua Fine Chemical failed to report its first U.S. entry and/or U.S. shipment within one year of its request for a new shipper review, thus failing to satisfy the deadline requirements of 19 CFR 351.214(c). Because Donghua Fine Chemical's request did not satisfy the regulatory requirements for a new shipper review, we are rescinding the new shipper for Donghua Fine Chemical.

DATES: *Effective Date:* December 9, 2013.

FOR FURTHER INFORMATION CONTACT: Brian Davis or Angelica Mendoza, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7924 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Period of Review

The new shipper review covers Hebei Donghua Jiheng Fine Chemical Company, Ltd. (Donghua Fine Chemical) for the period of review March 1, 2012, through August 31, 2012.

[1] *See Glycine from the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Review; 2012,* 78 FR 52501 (August 23, 2013) (*Preliminary Rescission*).

Scope of the Order

The product covered by the antidumping duty order is glycine, which is a free-flowing crystalline material, like salt or sugar. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.49.4020. The HTSUS subheading is provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.[2]

Tolling Deadlines

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, we have exercised our discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 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. Accordingly, the revised deadline for the final results of this review is now December 2, 2013.[3]

Methodology

We have conducted this new shipper review in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214. For a full description of the methodology underlying our conclusions, please see Final Decision Memorandum and Proprietary Analysis Memorandum,[4] both dated concurrently with, and hereby adopted by, this notice.

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding, ''Issues and Decision Memorandum for the Final Rescission of the Antidumping Duty New Shipper Reviews of Glycine from the People's Republic of China'' (Final Decision Memorandum), dated concurrently with these results and hereby adopted by this notice, for a complete description of the scope of the order; *see also Antidumping Duty Order: Glycine From the People's Republic of China,* 60 FR 16116 (March 29, 1995).

[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 Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding ''Proprietary Analysis Memorandum for the Final Rescission of the Antidumping Duty New Shipper Review of Glycine from the People's Republic of China'' (Proprietary Analysis Memorandum) dated concurrently with these results and hereby adopted by this notice, as much of the discussion is proprietary in nature.

Final Rescission of Donghua Fine Chemical

As we have explained in the Final Decision Memorandum and the Proprietary Analysis Memorandum, we continue to find that, because Donghua Fine Chemical appears to be affiliated with PRC-companies that have had prior shipments of subject merchandise to the United States, it has therefore failed to certify to its first U.S. entry, its first U.S. shipment, and its first U.S. sale, as required by 19 CFR 351.214(b)(2)(iv)(A) and (C).[5] We also continue to find that Donghua Fine Chemical failed to report its first U.S. entry and/or U.S. shipment within one year of its request for a new shipper review, thus failing to satisfy the deadline requirements of 19 CFR 351.214(c). As a result, we are rescinding the new shipper review of Donghua Fine Chemical.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Final Decision Memorandum and Proprietary Analysis Memorandum, both dated concurrently with, and hereby adopted by, this notice. A list of the issues raised in the briefs and addressed in the Final Decision Memorandum is appended to this notice. The Final Decision Memorandum is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed Final Decision Memorandum and the electronic versions of the Final Decision Memorandum are identical in content.

Cash Deposit Requirements

Effective upon publication of the final rescission of the new shipper review of Donghua Fine Chemical, we will instruct U.S. Customs and Border Protection (CBP) to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise by Donghua Fine Chemical. Cash deposits will be required for exports of subject merchandise by Donghua Fine Chemical entered, or withdrawn from warehouse, for consumption on or after the publication date at the *ad valorem* PRC-wide rate, 453.79 percent.

Assessment Instructions

As a result of the rescission of the new shipper review of Donghua Fine Chemical, the entries of subject merchandise made by Donghua Fine Chemical covered by this new shipper review will be reviewed in 2012–2013 administrative review. Because the period of review (POR) of the administrative review coincides with the POR of this new shipper review, we will assess Donghua Fine Chemical's entries and issue liquidation instructions for Donghua Fine Chemical's entries upon completion of the 2012–2013 administrative review. Accordingly, upon completion of the 2012–2013 administrative review, we will instruct CBP to assess antidumping duties on entries for Donghua Fine Chemical at the appropriate rate determined in the final results of the 2012–2013 administrative review.

Notification to Importers

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.

Return or Destruction of Proprietary Information

This notice serves as a reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of 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)(2)(B) and 777(i) of the Act and 19 CFR 351.214.

Dated: December 2, 2013.

Paul Piquado

Assistant Secretary for Enforcement and Compliance.

List of Issues Addressed in the Final Decision Memorandum

Comment 1: Interpretation of the New Shipper Review Certification Requirement
Comment 2: Affiliation Findings
Comment 3: Surrogate Values

[FR Doc. 2013–29337 Filed 12–6–13; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See* Final Decision Memorandum; *see also* Proprietary Analysis Memorandum.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–819]

Steel Concrete Reinforcing Bar From Turkey: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 9, 2013.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Operations, Office III, Import Administration, U.S. Department of Commerce, Room C–100, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–2209.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2013, the Department of Commerce (the Department) initiated a countervailing duty investigation on steel concrete reinforcing bar from Turkey.[1] The original signature date for the preliminary determination was November 29, 2013. Subsequently, as explained in a memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[2] Accordingly, all deadlines in this investigation were extended by 16 days, and the signature date for the preliminary determination was revised to December 16, 2013.[3]

[1] *See Steel Concrete Reinforcing Bar from Turkey: Initiation of Countervailing Duty Investigations,* 78 FR 60831 (October 2, 2013) (*Initiation Notice*).

[2] *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).

[3] *See* Memorandum to the File titled ''*Revised Signature Date for Preliminary Determination,*'' dated October 24, 2013.

Postponement of 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, if the petitioner makes a timely request for an extension in accordance with 19 CFR 351.205(b)(2), section 703(c)(1)(A) of the Act allows the Department to postpone the preliminary determination until no later than 130 days after the date on which the administering authority initiated the investigation.

On November 21, 2013, the Rebar Trade Action Coalition and its individual members, the petitioners in this investigation, requested that the deadline for the preliminary determination in this case be extended in accordance with 19 CFR 351.205(b)(2). Therefore, pursuant to section 703(c)(1)(A) of the Act, we are fully extending the due date for the preliminary determination. Because, as noted above, the Department tolled the original preliminary signature date to account for the Federal Government closure, the extension is effectively 65 days from the revised preliminary date of December 16, 2013. As a result, the deadline for completion of the preliminary determination is now February 19, 2014.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: November 25, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2013–29336 Filed 12–6–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–999]

1,1,1,2 Tetrafluoroethane From the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement & Compliance, formerly Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* December 9, 2013.

FOR FURTHER INFORMATION CONTACT: Katie Marksberry, Office V, AD/CVD Operations, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202.482.7906.

SUPPLEMENTARY INFORMATION:

The Petition

On October 22, 2013, the Department of Commerce (the ''Department'') received a countervailing duty (''CVD'') petition concerning imports of 1,1,1,2 Tetrafluoroethane (''tetrafluoroethane'') from the People's Republic of China (''PRC''), filed in proper form by Mexichem Fluor, Inc. (''Petitioner''), domestic producers of tetrafluoroethane. The CVD petition was accompanied by an antidumping duty (''AD'') petition concerning imports of tetrafluoroethane from the PRC.[1] On October 25 and November 6, 2013, the Department requested additional information and clarification of certain areas of the Petition, and on October 29 and November 8, 2013, respectively, Petitioner filed a response to each request.[2] Additionally, on November 7, 2013, Petitioner filed a response to the Department's November 6, 2013, request for additional information and clarification of the scope of the Petition.[3]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the ''Act''), Petitioners allege that producers/exporters of tetrafluoroethane in the PRC received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, or threaten material injury to, an industry in the United States.

The Department finds that Petitioners filed this Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and Petitioners have demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department to initiate (*see* ''Determination of Industry Support for the Petition'' below).

Period of Investigation

The period of investigation (''POI'') is January 1, 2012 through December 31, 2012, in accordance with 19 CFR 351.204(b)(2).

Scope of the Investigation

The product covered by this investigation is tetrafluoroethane from the PRC. For a full description of the scope of the investigation, please see the ''Scope of Investigation'' in the appendix to this notice.

Comments on the Scope of the Investigation

During our review of the Petition, we solicited information from Petitioners to ensure that the proposed scope language is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations[4], we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by December 22, 2013, which is 20 calendar days from the signature date of this notice. All comments must be filed on the record of the CVD investigation, as well as the concurrent AD investigation.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement & Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the Enforcement & Compliance's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline established by the Department.[5]

[1] *See* ''Petition for the Imposition of Antidumping and Countervailing Duties on 1,1,1,2 Tetrafluoroethane from the People's Republic of China, dated October 22, 2013 (hereafter referred to as the ''Petition'').

[2] *See* Petitioner's October 29, 2013, filing titled, ''1,1,1,2-Tetrafluoroethane from the People's Republic of China: Response to CVD Issues Deficiency Questionnaire,''; *see also* Petitioner's October 29, 2013, filing titled, ''1,1,1,2-Tetrafluoroethane from the People's Republic of China: Response to General Issues Supplemental Questionnaire'' (''General Issues Supplement''), and Petitioner's November 8, 2013, filing, titled ''1,1,1,2-Tetrafluoroethane from the People's Republic of China: Response to Second Antidumping Supplemental Questionnaire''.

[3] *See* Petitioner's November 7, 2013, filing titled, ''1,1,1,2-Tetrafluoroethane from the People's Republic of China: Response to Scope Questionnaire,''.

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] 19 CFR 351.303(b)(1). Information on help using IA ACCESS can be found at *https://iaaccess.trade.gov/help.aspx* and a handbook can be found at *https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf.*

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, on October 22, 2013, we invited the Government of the PRC (''GOC'') for consultations regarding the CVD petition. On November 28, 2013, the GOC filed written comments with the Department with regard to the CVD petition.[6]

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[7] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[8]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that tetrafluoroethane, as defined in the scope of the investigation, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[9]

On November 1, 2013, the Department extended the initiation deadline by 20 days to poll the domestic industry in accordance with section 702(c)(4)(D) of the Act, because it was ''not clear from the Petitions whether the industry support criteria have been met. . . .''[10]

On November 7, 2013, we issued polling questionnaires to all known producers of tetrafluoroethane identified in the Petition and by the ITC. We requested that each company complete the polling questionnaire and certify its response by the due date specified in the cover letter to the questionnaire.[11]

Our analysis of the data we received in the polling questionnaire responses indicates that the domestic producers of tetrafluoroethane who support the Petition account for at least 25 percent of the total production of the domestic like product and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[12] Accordingly, the Department determines that the industry support requirements of section 702(c)(4)(A) of the Act have been met. Therefore, the Department determines that Petitioner filed this Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department initiate.[13]

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[14]

Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenues; decline in U.S. sales; and decline in financial performance.[15] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[16]

[6] *See* Memorandum to The File, from Katie Marksberry, Case Analyst, Re: Countervailing Duty Petition on 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Comments from the Government of the People's Republic of China Regarding the Petition, dated December 2, 2013.

[7] *See* section 771(10) of the Act.

[8] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[9] *See* Countervailing Duty Investigation Initiation Checklist: 1,1,1,2-Tetrafluoroethane from the People's Republic of China (''Initiation Checklist''), at Attachment II, Analysis of Industry Support for the Petitions Covering 1,1,1,2-Tetrafluoroethane from the People's Republic of China (''Attachment II''). This checklist is dated concurrently with this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit (''CRU''), Room 7046 of the main Department of Commerce building.

[10] *See Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping Duty and Countervailing Duty Petitions: 1,1,1,2-Tetrafluoroethane From the People's Republic of China,* 78 FR 66894, 66895 (November 7, 2013).

[11] For a detailed discussion of the responses received, *see* Initiation Checklist, at Attachment II. The polling questionnaire and questionnaire responses are on file electronically via IA ACCESS and can also be accessed through the CRU.

[12] *See* Initiation Checklist, at Attachment II.

[13] *Id.*

[14] *See* General Issues Supplement, at 5–6 and Exhibit 5.

[15] *See* Volume I of the Petition, at 4–13 and Exhibits I–5 and I–8 through I–10; *see also* General Issues Supplement, at 5–6 and Exhibits 4 and 5.

[16] *See* Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a CVD petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioners supporting the allegations.

The Department has examined the Petition on tetrafluoroethane from the PRC and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether producers/exporters of tetrafluoroethane in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* the CVD Initiation Checklist which accompanies this notice.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation of six alleged programs. For the other three programs alleged by Petitioners, we have determined that the requirements for initiation have not been met. For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* the CVD Initiation Checklist.

Respondent Selection

For this investigation, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POI (*i.e.,* calendar year 2012) under the following Harmonized Tariff Schedule of the United States numbers: 2903.39.2020. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties with access to information protected by APO within five days of the announcement of the initiation of this investigation. Interested parties may submit comments regarding the CBP data and respondent selection within seven calendar days of release of this data. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at *http://enforcement.trade.gov/apo/index.html.*

Distribution of Copies of the CVD Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the representatives of the GOC. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the petition to the foreign producers/exporters satisfied by the delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of subsidized tetrafluoroethane from the PRC materially injure, or threaten material injury to, a U.S. industry.[17] A negative ITC determination will result in the investigation being terminated.[18] Otherwise, the investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

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 AD and CVD 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 proceeding segments initiated on or after May 10, 2013, and thus are applicable to this investigation. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013–08227.txt,* prior to submitting factual information in these investigations.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in AD and CVD proceedings.[19] 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 section 19 CFR 351.408(c), or to measure the adequacy of remuneration under section 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 CBP 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

Injury and Causation for the Petitions Covering 1,1,1,2-Tetrafluoroethane from the People's Republic of China.

[17] *See* section 703(a)(2) of the Act.

[18] *See* section 703(a)(1) of the Act.

[19] See Extension of Time Limits; Final Rule, 78 FR 57790 (September 20, 2013).

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. Review Extension of Time Limits; Final Rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this segment.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[20] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD or CVD investigations or proceedings initiated on or after August 16, 2013, including this investigation.[21] The formats for the revised certifications are provided at the end of the *Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 2, 2013.

Paul Piquado,

Assistant Secretary for Enforcement & Compliance.

Appendix

Appendix I

Scope of the Investigation

The product subject to this investigation is 1,1,1,2-Tetrafluoroethane, R–134a, or its chemical equivalent, regardless of form, type, or purity level. The chemical formula for 1,1,1,2-tetrafluoroethane is CF_3-CH_2F, and the Chemical Abstracts Service (''CAS'') registry number is CAS 811–97–2.

1,1,1,2-Tetrafluoroethane is sold under a number of trade names including Klea 134a and Zephex 134a (Mexichem Fluor); Genetron 134a (Honeywell); Suva 134a, Dymel 134a, and Dymel P134a (DuPont); Solkane 134a (Solvay); and Forane 134a (Arkema). Generically, 1,1,1,2-tetrafluoroethane has been sold as Fluorocarbon 134a, R–134a, HFC–134a, HF A–134a, Refrigerant 134a, and UN3159.

Merchandise covered by the scope of this investigation is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 2903.39.2020. Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2013–29341 Filed 12–6–13; 8:45 am]

BILLING CODE 3510–DS–P

[20] *See* section 782(b) of the Act.

[21] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*'').

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC959

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Groundfish and Halibut Observer Program Standard Ex-Vessel Prices

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

ACTION: Notification of standard ex-vessel prices.

SUMMARY: NMFS publishes standard ex-vessel prices for groundfish and halibut for the calculation of the observer fee under the North Pacific Groundfish and Halibut Observer Program (Observer Program). This notice is intended to provide information to vessel owners, processors, registered buyers, and other participants about the standard ex-vessel prices that will be used to calculate the observer fee liability for landings of groundfish and halibut made in 2014. NMFS will send invoices to processors and registered buyers subject to the fee by January 15, 2015. Fees are due to NMFS on or before February 15, 2015.

DATES: Effective January 1, 2014.

FOR FURTHER INFORMATION CONTACT: For general questions about the observer fee and standard ex-vessel prices, contact Michael Camacho at 907–586–7471. For questions about the fee billing process, contact Troie Zuniga, Fee Coordinator, 907–586–7105.

SUPPLEMENTARY INFORMATION:

Background

The Observer Program deploys NMFS-certified observers (observers) who obtain information necessary for the conservation and management of the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) groundfish and halibut fisheries. Fishery managers use information collected by observers to monitor quotas, manage groundfish and prohibited species catch, and document and reduce fishery interactions with protected resources. Scientists use observer-collected information for stock assessments and marine ecosystem research.

In 2012, the North Pacific Fishery Management Council restructured the Observer Program under Amendment 86 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 76 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (Amendments 86/76). The final rule implementing Amendments 86/76 added a new funding and deployment system for observer coverage in the groundfish and halibut fisheries off Alaska that allows NMFS to determine when and where to deploy observers according to management and conservation needs. The final rule was published in the **Federal Register** on November 21, 2012 (77 FR 70062). Regulations implementing the Observer Program are set forth at 50 CFR part 679, subpart E.

Restructuring divided the Observer Program into two observer coverage categories—partial and full. All groundfish and halibut vessels and processors are included in one of these two categories. The partial observer coverage category includes vessels and processors that are not required to have an observer at all times; the full observer coverage category includes vessels and processors required to have all of their fishing and processing operations off Alaska observed. Vessels and processors in the full coverage category arrange and pay for observer services from a permitted observer provider. Observer coverage for the partial coverage category is funded through a system of fees based on the ex-vessel value of groundfish and halibut. The proposed rule for Amendments 86/76 (77 FR 23326; April 18, 2012) provides a detailed explanation of the vessels and processors in the partial coverage category, the landings subject to the observer fee, and the process for calculating standard ex-vessel prices. This notice summarizes that information.

Landings Subject to Observer Coverage Fee

The objective of the observer fee assessment is to levy a fee on all landings accruing against a Federal total allowable catch (TAC) for groundfish or a commercial halibut quota made by vessels that are subject to Federal regulations and not included in the full coverage category. Therefore, a fee is only assessed on landings of groundfish from vessels designated on a Federal Fisheries Permit (FFP) or from vessels

landing individual fishing quota (IFQ) or community development quota (CDQ) halibut or IFQ sablefish. Within the subset of vessels subject to the observer fee, only landings accruing against the Federal TAC are included in the fee assessment. A table with additional information about which landings are and are not subject to the observer fee is in NMFS regulations at § 679.55(c) and also shown on page 3 of an informational bulletin titled ''Observer Program Fee Collection'' on the NMFS Alaska Region Web page at *http://www.alaskafisheries.noaa.gov/sustainablefisheries/observers/observerfees.pdf.*

Fee Determination

A fee equal to 1.25 percent of the ex-vessel value will be assessed on the landings of groundfish and halibut subject to the fee. Ex-vessel value is determined by multiplying the standard price for groundfish by the round weight equivalent for each species, gear, and port combination, and the standard price for halibut by the headed and gutted weight equivalent. NMFS will assess each landing report submitted via eLandings and each manual landing entered into the IFQ landing database and determine if the landing is subject to the observer fee and, if it is, which groundfish in the landing are subject to the observer fee. All IFQ or CDQ halibut in a landing subject to the observer fee will be assessed as part of the fee liability. For any groundfish or halibut subject to the observer fee, NMFS will apply the appropriate standard ex-vessel prices for the species, gear type, and port, and calculate the observer fee liability associated with the landing.

Processors and registered buyers access the landing-specific, observer fee liability information through NMFS Web Application (*https://alaskafisheries.noaa.gov/webapps/efish/login*) or eLandings (*https://elandings.alaska.gov/*). For IFQ halibut, CDQ halibut, and IFQ sablefish, this information is available as soon as the IFQ report is submitted. For groundfish and sablefish that accrue against the fixed gear sablefish CDQ reserve, the observer fee liability information is generally available within 24 hours of receipt of the report. The time lag on the groundfish and sablefish CDQ fee information is necessary because NMFS must process the landings report through the catch accounting system computer programs to determine if all of the groundfish in the landings are subject to the observer fee. Information about which groundfish in a landing accrues against a Federal TAC is not immediately available from the processor's data entry into eLandings.

The intent of the North Pacific Fishery Management Council and NMFS is for vessel owners to split the fee liability 50/50 with the processor or registered buyer. While vessels and processors are responsible for their portion of the fee, the owner of a shoreside processor or a stationary floating processor and the registered buyer are responsible for collecting the fee, including the vessel's portion of the fee, and remitting the full fee liability to NMFS.

NMFS will send invoices to processors and registered buyers for their total fee liability, which is determined by the sum of the fees reported for each landing for that processor or registered buyer for the prior calendar year, by January 15, 2015. Processors and registered buyers must remit the fees to NMFS using NMFS Web Application by February 15, 2015. Processors and registered buyers will have access to this system through a User ID and password issued by NMFS. Instructions for electronic payment will be provided on the NMFS Alaska Region Web site at *https://alaskafisheries.noaa.gov* and on the observer fee liability invoice to be mailed to each permit holder.

Standard Prices

This notice provides the standard ex-vessel prices for groundfish and halibut species subject to the observer fee in 2014. Data sources for ex-vessel prices are:

- For groundfish other than sablefish IFQ and sablefish accruing against the fixed gear sablefish CDQ reserve, the State of Alaska's Commercial Fishery Entry Commission's (CFEC) gross revenue data, which are based on the Commercial Operator Annual Report (COAR) and Alaska Department of Fish and Game fish tickets; and
- For halibut IFQ, halibut CDQ, sablefish IFQ, and sablefish accruing against the fixed gear sablefish CDQ reserve, the IFQ Buyer Report that is submitted annually to NMFS under § 679.5(l)(7)(i).

The standard prices in this notice were calculated using applicable guidance for protecting confidentiality of data submitted to or collected by NMFS. NMFS does not publish any price information that would permit the identification of an individual or business. At least four persons must make landings of a species with a particular gear type at a particular port in order for NMFS to publish that price data for that species-gear-port combination. Similarly, at least four processors in a particular port must purchase a species harvested with a particular gear type in order for NMFS to publish a price for that species-gear-port combination. Price data that is confidential because fewer than four persons contributed data to a particular species-gear-port combination has been aggregated to protect confidential data.

Groundfish Standard Ex-Vessel Prices

Table 1 shows the groundfish species standard ex-vessel prices for 2014. These prices are based on the CFEC gross revenue data, which are based on landings data from Alaska Department of Fish and Game fish tickets and information from the COAR. The COAR contains statewide buying and production information, and is considered the best routinely collected information to determine the ex-vessel value of groundfish harvested from waters off Alaska. More information about the sources of data and methods used to calculate standard ex-vessel prices for groundfish is in the proposed and final rules for Amendments 86/76 and on the NMFS Alaska Region's Web site at *http://www.alaskafisheries.noaa.gov/frules/77fr70062.pdf.*

The standard ex-vessel prices for groundfish were calculated by adding the annual volume (weight) and ex-vessel value from the CFEC gross revenue files for 2010, 2011, and 2012 by the species, port, and gear category, and then dividing total ex-vessel value over the 3-year period in each category by total volume in each category. This calculation results in a weighted average ex-vessel price by species, port, and gear category. Three gear categories were used for the standard ex-vessel prices: Pelagic trawl gear, non-pelagic trawl gear, and other gear (hook-and-line, pot, and jig).

CFEC ex-vessel value data are available in the fall of the year following the year the fishing occurred. Thus, it is not possible to base ex-vessel fee liabilities on standard prices that are less than 2 years old. More information about the reasons for using a 3-year rolling average standard ex-vessel price based on the CFEC gross earnings data is contained in the proposed rule for Amendments 86/76 (77 FR 23326; April 18, 2012).

If a particular species is not listed in Table 1, the standard ex-vessel price for a species group, if it exists in the management area, will be used. If price data for a particular species remained confidential once aggregated to the ALL level, data is aggregated by species group (GOA Deep-water Flatfish; GOA Shallow-water Flatfish; GOA Skate,

Other; and Other Rockfish). Standard prices for the species groups are shown at the bottom of Table 2.

If a port-level price does not meet the confidentiality requirements, the data are aggregated by port-group. Port-group data is first aggregated by regulatory area in the GOA (Eastern GOA, Central GOA, and Western GOA) and by subarea in the BSAI (BS subarea and AI subarea). Port-group data for Southeast Alaska (SEAK) and the Eastern GOA—with the exception of Cordova, Whittier, and Yakutat in the SEAK—also are presented separately when price data is available. If confidentiality requirements are still not met by aggregating prices across ports at these levels, the prices are aggregated at the level of BSAI or GOA, then statewide (AK) and ports outside of Alaska (OTAK), and finally all ports, including those outside of Alaska (''ALL'').

Standard prices are presented separately for non-pelagic trawl and pelagic trawl when non-confidential data is available. NMFS also calculated prices for a ''Pelagic Trawl/Non-pelagic Trawl Combined'' when combining trawl price data for landings of a species in a particular port or port group will not violate confidentiality requirements. Creating this standard price category allows NMFS to assess a fee on 2014 landings of some of the species with pelagic trawl gear based on a combined trawl gear price for the port or port group.

If no standard ex-vessel price is listed for the species or species group and gear category combination, no fee will be assessed on that landing. Volume and value data for that species will be added to the standard ex-vessel prices in future years, if that data becomes available and display of a standard ex-vessel price meets confidentiality requirements.

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2014 OBSERVER COVERAGE FEE LIABILITY

[Based on volume and value from 2010, 2011, and 2012]

Species [1 2]	Port/Area [3 4]	HAL/POT/JIG	NPT	PTR	PTR/NPT
Alaska Plaice Flounder (133):					
	Kodiak	—	$0.08	—	$0.08
	CGOA	—	0.08	—	0.08
	GOA	—	0.08	—	0.08
	AK	—	0.08	—	0.08
	ALL	—	0.08	—	0.08
Arrowtooth Flounder (121):					
	Kodiak	—	0.06	$0.06	—
	CGOA	—	0.06	0.06	—
	GOA	$0.07	0.06	0.06	—
	AK	0.07	0.06	0.06	—
	ALL	0.07	0.06	0.06	—
Black Rockfish (142)	AK	0.43	0.27	—	0.27
Bocaccio Rockfish (137):					
	Sitka	0.51	—	—	—
	SEAK	0.38	—	—	—
	EGOA	0.38	—	—	—
	GOA	0.40	—	—	—
	AK	0.40	—	—	—
	ALL	0.40	—	—	—
Butter Sole (126):					
	Kodiak	—	0.14	0.14	—
	CGOA	—	0.14	0.14	—
	GOA	—	0.14	0.14	—
	AK	—	0.14	0.14	—
	ALL	—	0.14	0.14	—
Canary Rockfish (146):	SEAK	0.48	—	—	—
	EGOA	0.48	—	—	—
	Seward	0.40	—	—	—
	CGOA	0.40	—	—	—
	GOA	0.47	—	—	—
	AK	0.47	—	—	—
	ALL	0.47	—	—	—
China Rockfish (149):	SEAK	0.51	—	—	—
	Cordova	0.29	—	—	—
	EGOAxSE	0.29	—	—	—
	Homer	0.41	—	—	—
	Seward	0.51	—	—	—
	CGOA	0.45	—	—	—
	GOA	0.34	—	—	—
	AK	0.34	—	—	—
	ALL	0.34	—	—	—
Copper Rockfish (138):	Sitka	0.56	—	—	—
	SEAK	0.54	—	—	—
	EGOA	0.33	—	—	—
	Homer	0.40	—	—	—
	CGOA	0.44	—	—	—
	GOA	0.34	—	—	—
	AK	0.34	—	—	—
	ALL	0.34	—	—	—
Dover Sole (124):	Kodiak	—	0.10	0.10	—

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2014 OBSERVER COVERAGE FEE LIABILITY—Continued

[Based on volume and value from 2010, 2011, and 2012]

Species [1 2]	Port/Area [3 4]	HAL/POT/JIG	NPT	PTR	PTR/NPT
	CGOA	—	0.10	0.10	—
	GOA	—	0.10	0.10	—
	AK	—	0.10	0.10	—
	ALL	—	0.10	0.10	—
Dusky Rockfish (172):	Sitka	0.41	—	—	—
	SEAK	0.38	—	—	—
	EGOAxSE	0.24	—	—	—
	Homer	0.30	—	—	—
	Kodiak	0.31	0.18	0.15	—
	Seward	0.35	—	—	—
	CGOA	0.32	0.18	0.30	—
	GOA	0.33	0.18	0.30	—
	AK	0.33	0.18	0.30	—
	ALL	0.33	0.18	0.30	—
English Sole (128):	Kodiak	—	0.15	—	0.15
	CGOA	—	0.15	—	0.15
	GOA	—	0.15	—	0.15
	AK	—	0.15	—	0.15
	ALL	—	0.15	—	0.15
Flathead Sole (122):	Kodiak	—	0.14	0.14	—
	CGOA	—	0.14	0.13	—
	GOA	—	0.14	0.12	—
	AK	—	0.14	0.11	—
	ALL	—	0.14	0.11	—
Northern Rockfish (136):	Kodiak	—	0.17	0.16	—
	CGOA	0.28	0.17	0.16	—
	GOA	0.28	0.17	0.16	—
	AK	0.28	0.17	0.16	—
	ALL	0.28	0.17	0.16	—
Octopus (870):	Homer	0.71	—	—	—
	Kodiak	0.48	0.52	0.49	—
	CGOA	0.49	0.52	0.49	—
	GOA	0.47	0.52	0.47	—
	BS	0.25	—	—	—
	BSAI	0.25	—	—	—
	AK	0.46	0.51	0.47	—
	ALL	0.46	0.51	0.47	—
Pacific Cod (110):	Craig	0.14	—	—	—
	Hoonah	0.51	—	—	—
	Juneau	0.58	—	—	—
	Ketchikan	0.33	—	—	—
	Petersburg	0.39	—	—	—
	Sitka	0.50	—	—	—
	SEAK	0.51	—	—	—
	Cordova	0.40	—	—	—
	Whittier	0.35	—	—	—
	EGOAxSE	0.40	—	—	—
	Homer	0.36	—	—	—
	Kodiak	0.34	0.29	0.29	—
	Seward	0.37	—	—	—
	CGOA	0.34	0.29	0.29	—
	King Cove	0.29	—	—	—
	WGOA	0.29	—	—	—
	GOA	—	0.30	0.17	—
	Adak	0.31	—	—	—
	AI	0.31	—	—	—
	Dutch Harbor/Unalaska	0.34	0.30	—	0.30
	BS	0.33	0.29	—	0.29
	BSAI	—	0.30	—	0.30
	AK	0.33	0.29	0.17	—
	ALL	0.33	0.29	0.17	—
Pacific Ocean Perch (141):	EGOA	0.45	—	—	—
	Kodiak	—	0.17	0.16	—
	CGOA	—	0.17	0.16	—
	GOA	0.22	0.17	0.18	—
	AK	0.18	0.17	0.18	—
	ALL	0.18	0.17	0.18	—
Pollock (270):	EGOA	0.12	—	—	—
	Homer	0.30	—	—	—

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2014 OBSERVER COVERAGE FEE LIABILITY—Continued

[Based on volume and value from 2010, 2011, and 2012]

Species [1 2]	Port/Area [3 4]	HAL/POT/JIG	NPT	PTR	PTR/NPT
	Kodiak	0.13	0.18	0.18	—
	CGOA	0.13	0.18	0.18	—
	GOA	0.13	0.18	0.17	—
	Dutch Harbor/Unalaska	—	0.16	—	0.15
	BS	0.05	0.17	—	0.16
	BSAI	0.05	0.17	—	0.16
	AK	0.13	0.17	0.17	—
	ALL	0.13	0.17	0.17	—
Quillback Rockfish (147):	Hoonah	0.51	—	—	—
	Ketchikan	0.47	—	—	—
	Petersburg	0.23	—	—	—
	Sitka	0.88	—	—	—
	SEAK	0.86	—	—	—
	Cordova	0.32	—	—	—
	EGOAxSE	0.29	—	—	—
	Homer	0.29	—	—	—
	Seward	0.36	—	—	—
	CGOA	0.36	—	—	—
	GOA	0.65	—	—	—
	AK	0.65	—	—	—
	ALL	0.65	—	—	—
Redbanded Rockfish (153):	Ketchikan	0.31	—	—	—
	Petersburg	0.21	—	—	—
	Sitka	0.43	—	—	—
	SEAK	0.32	—	—	—
	EGOAxSE	0.30	—	—	—
	Homer	0.30	—	—	—
	Kodiak	0.26	0.35	—	0.35
	Seward	0.33	—	—	—
	CGOA	0.31	0.35	—	0.35
	GOA	0.32	0.35	—	0.35
	AK	0.32	0.35	—	0.35
	ALL	0.32	0.35	—	0.35
Redstripe Rockfish (158):	Sitka	0.42	—	—	—
	SEAK	0.42	—	—	—
	EGOA	0.39	—	—	—
	Homer	0.26	—	—	—
	CGOA	0.26	—	—	—
	GOA	0.27	—	—	—
	AK	0.27	—	—	—
	ALL	0.27	—	—	—
Rex Sole (125):	Kodiak	—	0.29	0.29	—
	CGOA	—	0.29	0.29	—
	GOA	—	0.29	0.28	—
	AK	—	0.29	0.26	—
	ALL	—	0.29	0.26	—
Rock Sole (123):	Kodiak	—	0.23	0.21	—
	CGOA	—	0.23	0.21	—
	GOA	—	0.23	0.21	—
	AK	—	0.23	0.21	—
	ALL	—	0.23	0.21	—
Rosethorn Rockfish (150):	SEAK	0.36	—	—	—
	EGOA	0.44	—	—	—
	GOA	0.43	—	—	—
	AK	0.43	—	—	—
	ALL	0.43	—	—	—
Rougheye Rockfish (151):	Craig	0.28	—	—	—
	Hoonah	0.30	—	—	—
	Ketchikan	0.30	—	—	—
	Petersburg	0.25	—	—	—
	Sitka	0.44	—	—	—
	SEAK	0.36	—	—	—
	Cordova	0.26	—	—	—
	Whittier	0.56	—	—	—
	EGOAxSE	0.28	—	—	—
	Homer	0.30	—	—	—
	Kodiak	0.32	0.19	0.19	—
	Seward	0.32	—	—	—
	CGOA	0.32	0.19	0.19	—

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2014 OBSERVER COVERAGE FEE LIABILITY—Continued

[Based on volume and value from 2010, 2011, and 2012]

Species [1 2]	Port/Area [3 4]	HAL/POT/JIG	NPT	PTR	PTR/NPT
	GOA	0.32	0.21	0.19	—
	Dutch Harbor/Unalaska	0.30	—	—	—
	BS	0.31	—	—	—
	BSAI	0.31	—	—	—
	AK	0.32	0.21	0.19	—
	ALL	0.32	0.21	0.19	—
Sablefish (blackcod) (710):	Ketchikan	[5] n/a	—	—	—
	Petersburg	n/a	—	—	—
	Sitka	n/a	—	—	—
	SEAK	n/a	—	—	—
	Cordova	n/a	—	—	—
	Whittier	n/a	—	—	—
	EGOAxSE	n/a	—	—	—
	Homer	n/a	—	—	—
	Kodiak	n/a	3.60	3.39	—
	Seward	n/a	—	—	—
	CGOA	n/a	3.60	4.04	—
	GOA	n/a	3.60	4.04	—
	Adak	n/a	—	—	—
	AI	n/a	—	—	—
	Dutch Harbor/Unalaska	n/a	—	—	—
	BS	n/a	—	—	—
	AK	n/a	3.60	4.04	—
	ALL	n/a	3.60	4.04	—
Sand Sole (132):	Kodiak	—	0.15	—	0.15
	CGOA	—	0.20	—	0.20
	GOA	—	0.20	—	0.20
	AK	—	0.20	—	0.20
	ALL	—	0.20	—	0.20
Shortraker Rockfish (152):	Ketchikan	0.30	—	—	—
	Petersburg	0.25	—	—	—
	Sitka	0.43	—	—	—
	SEAK	0.34	—	—	—
	Cordova	0.31	—	—	—
	Whittier	0.31	—	—	—
	EGOAxSE	0.42	—	—	—
	Homer	0.32	—	—	—
	Kodiak	0.34	0.23	0.22	—
	Seward	0.34	—	—	—
	CGOA	0.34	0.23	0.21	—
	GOA	0.35	0.27	0.21	—
	Dutch Harbor/Unalaska	0.09	—	—	—
	BS	0.17	—	—	—
	BSAI	0.17	—	—	—
	AK	0.34	0.27	0.21	—
	ALL	0.34	0.27	0.21	—
Silvergray Rockfish (157):	Craig	0.31	—	—	—
	Ketchikan	0.34	—	—	—
	Sitka	0.43	—	—	—
	SEAK	0.37	—	—	—
	EGOAxSE	0.34	—	—	—
	Homer	0.38	—	—	—
	Seward	0.38	—	—	—
	CGOA	0.38	—	—	—
	GOA	0.37	—	0.21	0.21
	AK	0.37	—	0.21	0.21
	ALL	0.37	—	0.21	0.21
Skate, Big (702):	EGOAxSE	0.38	—	—	—
	EGOA	0.38	—	—	—
	Homer	0.40	—	—	—
	Kodiak	0.36	0.39	0.36	—
	CGOA	0.36	0.39	0.36	—
	GOA	0.37	0.39	0.36	—
	AK	0.37	0.39	0.36	—
	ALL	0.37	0.39	0.36	—
Skate, Longnose (701):	SEAK	0.28	—	—	—
	EGOAxSE	0.37	—	—	—
	Homer	0.40	—	—	—
	Kodiak	0.40	0.39	0.41	—

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2014 OBSERVER COVERAGE FEE LIABILITY—Continued

[Based on volume and value from 2010, 2011, and 2012]

Species [1 2]	Port/Area [3 4]	HAL/POT/JIG	NPT	PTR	PTR/NPT
	Seward	0.39	—	—	—
	CGOA	0.40	0.39	0.41	—
	GOA	0.39	0.39	0.41	—
	AK	0.39	0.39	0.41	—
	ALL	0.39	0.39	0.41	—
Skate, Other (700):	Kodiak	0.34	—	—	—
	CGOA	0.41	—	—	—
	GOA	0.38	—	—	—
	AK	0.34	0.05	—	0.05
	ALL	0.34	0.05	—	0.05
Squid (875):	Kodiak	—	—	0.07	0.07
	CGOA	—	—	0.07	0.07
	GOA	—	—	0.07	0.07
	AK	—	—	0.08	0.08
	ALL	—	—	0.08	0.08
Starry Flounder (129):	Kodiak	—	0.07	0.07	—
	CGOA	—	0.07	0.07	—
	GOA	—	0.07	0.07	—
	AK	—	0.07	0.07	—
	ALL	—	0.07	0.07	—
Thornyhead Rockfish (Idiots) (143):	Hoonah	1.00	—	—	—
	Ketchikan	1.20	—	—	—
	Petersburg	1.01	—	—	—
	Port Alexander	1.03	—	—	—
	Sitka	1.04	—	—	—
	SEAK	1.03	—	—	—
	Cordova	0.53	—	—	—
	EGOAxSE	0.84	—	—	—
	Homer	0.85	—	—	—
	Kodiak	0.66	0.49	—	0.49
	Seward	0.80	—	—	—
	CGOA	0.75	0.49	—	0.49
	King Cove	0.96	—	—	—
	WGOA	0.75	—	—	—
	GOA	—	0.50	—	0.50
	Adak	0.42	—	—	—
	AI	0.55	—	—	—
	Dutch Harbor/Unalaska	0.72	—	—	—
	BS	0.72	—	—	—
	AK	0.83	0.50	—	0.50
	ALL	0.83	0.50	—	0.50
Tiger Rockfish (148):	SEAK	0.32	—	—	—
	EGOAxSE	0.25	—	—	—
	Homer	0.28	—	—	—
	Seward	0.37	—	—	—
	CGOA	0.35	—	—	—
	GOA	0.31	—	—	—
	AK	0.31	—	—	—
	ALL	0.31	—	—	—
Vermilion Rockfish (184):	GOA	0.30	—	—	—
	AK	0.30	—	—	—
	ALL	0.33	—	—	—
Yelloweye Rockfish (145):	Craig	1.39	—	—	—
	Hoonah	0.53	—	—	—
	Juneau	0.99	—	—	—
	Ketchikan	1.05	—	—	—
	Petersburg	1.12	—	—	—
	Sitka	1.50	—	—	—
	SEAK	1.35	—	—	—
	Cordova	0.95	—	—	—
	Whittier	0.82	—	—	—
	EGOAxSE	0.96	—	—	—
	Homer	0.70	—	—	—
	Kodiak	0.47	0.24	—	0.24
	Seward	0.67	—	—	—
	CGOA	0.64	0.24	—	0.24
	WGOA	0.43	—	—	—
	GOA	—	0.24	—	0.24
	Dutch Harbor/Unalaska	0.21	—	—	—

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2014 OBSERVER COVERAGE FEE LIABILITY—Continued

[Based on volume and value from 2010, 2011, and 2012]

Species [1 2]	Port/Area [3 4]	HAL/POT/JIG	NPT	PTR	PTR/NPT
	BS	0.21	—	—	—
	BSAI	0.21	—	—	—
	AK	1.15	0.24	—	0.24
	ALL	1.15	0.24	—	0.24
Yellowtail Rockfish (155):	Sitka	0.54	—	—	—
	SEAK	0.53	—	—	—
	EGOA	0.52	—	—	—
	CGOA	0.20	—	—	—
	GOA	0.30	—	—	—
	AK	0.30	—	—	—
	ALL	0.30	—	—	—

— = no landings in last 3 years or the data is confidential.

[1] If species is not listed, use price for the species group in Table 2 if it exists in the management area. If no price is available for the species or species group, no fee will be assessed on that landing. That species will come into standard ex-vessel prices in future years.

[2] For species codes, see Table 2a to 50 CFR part 679.

[3] Regulatory areas are defined at § 679.2. (AI = Aleutian Islands subarea; AK = Alaska; ALL = all ports including those outside Alaska; BS = Bering Sea subarea; BSAI = Bering Sea/Aleutian Islands; CGOA = Central Gulf of Alaska; EGOA = Eastern Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; GOA = Gulf of Alaska; SEAK = Southeast Alaska; WGOA = Western Gulf of Alaska).

[4] If a price is listed for the species, port, and gear type combination, that price will be applied to the round weight equivalent for groundfish landings. If no price is listed for the port and gear type combination, use port group and gear type combination.

[5] n/a = ex-vessel prices for sablefish landed with hook-and-line, pot, or jig gear are listed in Table 3 with the prices for IFQ and CDQ landings.

TABLE 2—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES GROUPS FOR 2014 OBSERVER COVERAGE FEE LIABILITY

[Based on volume and value from 2010, 2011, and 2012]

Species Group [1]	Port/Area [2 3]	HAL/POT/JIG	NPT	PTR
GOA Deep Water Flatfish [4] (DFL4)	CGOA	—	$0.10	$0.10
	GOA	—	$0.10	$0.10
GOA Shallow Water Flatfish [5] (SFL1)	CGOA	—	$0.20	$0.15
	GOA	—	$0.20	$0.15
GOA Skate, Other (USKT)	SEAK	$0.34	—	—
	EGOA	$0.34	—	—
	CGOA	$0.41	—	—
	GOA	$0.38	—	—
Other Rockfish [6 7] (ROCK)	SEAK	$0.33	—	—
	EGOAxSE	$0.84	—	—
	CGOA	$0.59	$0.25	$0.22
	WGOA	$0.43	—	—
	GOA	—	$0.25	$0.23
	AI	$0.55	—	—
	BS	$0.71	—	—
	AK	—	$0.25	$0.23

— = no landings in last 3 years or the data is confidential.

[1] If species is not listed in Table 1, use price for the species group if it exists in the management area. If no price is available for the species or species group, no fee will be assessed on that landing. That species will come into standard ex-vessel prices in future years.

[2] Regulatory areas are defined at § 679.2. (AI = Aleutian Islands subarea; AK = Alaska; ALL = all ports including those outside Alaska; BS = Bering Sea subarea; CGOA = Central Gulf of Alaska; EGOA = Eastern Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; GOA = Gulf of Alaska; SEAK = Southeast Alaska; WGOA = Western Gulf of Alaska).

[3] If a price is listed for the species, port, and gear type combination, that price will be applied to the round weight equivalent for groundfish landings. If no price is listed for the port and gear type combination, use port group and gear type combination.

[4] ''Deep-water flatfish'' in the GOA means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

[5] ''Shallow-water flatfish'' in the GOA means flatfish not including ''deep-water flatfish,'' flathead sole, rex sole, or arrowtooth flounder.

[6] In the GOA:

''Other rockfish (slope rockfish)'' means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergray), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. reedi* (yellowmouth), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

''Other rockfish'' in the Western and Central Regulatory Areas means ''other rockfish (slope rockfish)'' and demersal shelf rockfish.

''Other rockfish'' in the West Yakutat District of the EGOA means ''other rockfish (slope rockfish),'' northern rockfish, *S. polyspinous, and* demersal shelf rockfish.

''Other rockfish'' in the SEO District of the GOA (and SEAK for Table 2) means ''other rockfish (slope rockfish) and northern rockfish, *S. polyspinous.*

[7] ''Other rockfish'' in the BSAI includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

Halibut and Sablefish IFQ and CDQ Standard Ex-Vessel Prices

Table 3 shows the observer fee standard ex-vessel prices for halibut and sablefish. These standard prices are calculated as a single annual average price, by port or port group. Volume and ex-vessel value data collected on the IFQ Buyer Report for 2013 landings was used to calculate the standard ex-vessel prices used to calculate the 2014 observer fee liability for halibut IFQ, halibut CDQ, sablefish IFQ, and sablefish landings that accrue against the fixed gear sablefish CDQ reserve.

TABLE 3—STANDARD EX-VESSEL PRICES FOR HALIBUT IFQ, HALIBUT CDQ, SABLEFISH IFQ, AND SABLEFISH ACCRUING AGAINST THE FIXED GEAR SABLEFISH CDQ RESERVE FOR THE 2014 OBSERVER FEE LIABILITY

[Based on 2013 IFQ Buyer Report]

Species	Port/Area [1]	Price [2]
Halibut (200):	Ketchikan	$5.22
	Petersburg	$5.42
	SEAK	$5.04
	Cordova	$5.31
	EGOAxSE	$5.04
	Homer	$5.37
	Kenai	$4.51
	Kodiak	$4.92
	Seward	$5.25
	CGOA	$5.04
	WGOA	$5.04
	AI	$5.04
	BS	$5.04
	AK	$5.04
	OTAK	$5.04
	ALL	$5.04
Sablefish (710):	Ketchikan	$2.82
	SEAK	$2.88
	EGOAxSE	$2.88
	Homer	$2.86
	Kodiak	$2.92
	Seward	$2.87
	CGOA	$2.88
	WGOA	$2.88
	AI	$2.88
	BS	$2.88
	AK	$2.88
	OTAK	$2.88
	ALL	$2.88

[1] Regulatory areas are defined at § 679.2. (AI = Aleutian Islands subarea; AK = Alaska; ALL = all ports including those outside Alaska; BS = Bering Sea subarea; CGOA = Central Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; OTAK = Outside Alaska; SEAK = Southeast Alaska; WGOA = Western Gulf of Alaska).

[2] If a price is listed for the species and port combination, that price will be applied to the round weight equivalent for sablefish landings and the headed and gutted weight equivalent for halibut landings. If no price is listed for the port, use port group.

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

Dated: December 4, 2013.

James P. Burgess,

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

[FR Doc. 2013–29356 Filed 12–6–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD014

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of availability of reports; public meetings, and hearings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) has begun its annual preseason management process for the 2014 ocean salmon fisheries. This document announces the availability of Pacific Council documents as well as the dates and locations of Pacific Council meetings and public hearings comprising the Pacific Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April 2014 Pacific Council meetings will be published in subsequent **Federal Register** documents prior to the actual meetings.

DATES: Written comments on the salmon management alternatives must be received by 11:59 p.m. Pacific Time, March 30, 2014.

ADDRESSES: Documents will be available from, and written comments should be sent to, Ms. Dorothy Lowman, Chair, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280 (voice) or (503) 820–2299 (fax). Comments can also be submitted via email at *PFMC.comments@noaa.gov.* or through the internet at the Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments, and include the I.D. number in the subject line of the message. For specific meeting and hearing locations, see **SUPPLEMENTARY INFORMATION.**

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION:

Tentative Schedule for Document Completion and Availability

February 18, 2014: ''Review of 2013 Ocean Salmon Fisheries, Stock Assessment and Fishery Evaluation Document for the Pacific Coast Salmon Fishery Management Plan'' will be mailed to the public and posted on the Pacific Council Web site at *http://www.pcouncil.org.*

February 28, 2014: ''Preseason Report I-Stock Abundance Analysis and Environmental Assessment Part 1 for 2014 Ocean Salmon Fishery Regulations'' will be mailed to the public and posted on the Pacific Council Web site at *http://www.pcouncil.org.*

March 21, 2014: ''Preseason Report II-Proposed Alternatives and Environmental Assessment Part 2 for 2014 Ocean Salmon Fishery Regulations'' and public hearing schedule will be mailed to the public and posted on the Pacific Council Web site at *http://www.pcouncil.org.* The report will include a description of the adopted salmon management alternatives and a summary of their biological and economic impacts.

April 21, 2014: ''Preseason Report III-Council-Adopted Management Measures and Environmental Assessment Part 3 for 2014 Ocean Salmon Fishery Regulations'' will be mailed to the public and posted on the Pacific Council Web site at *http://www.pcouncil.org.*

May 1, 2014: Federal regulations for 2014 ocean salmon regulations will be published in the **Federal Register** and implemented.

Meetings and Hearings

January 21–24, 2014: The Salmon Technical Team (STT) will meet at the Pacific Council office in a public work session to draft ''Review of 2013 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2014 ocean salmon fisheries.

February 18–21, 2014: The STT will meet at the Pacific Council office in a public work session to draft ''Preseason Report I-Stock Abundance Analysis and Environmental Assessment Part 1 for 2014 Ocean Salmon Fishery Regulations'' and to consider any other estimation or methodology issues pertinent to the 2014 ocean salmon fisheries.

March 24–25, 2014: Public hearings will be held to receive comments on the

proposed ocean salmon fishery management options adopted by the Pacific Council. Written comments received at the public hearings and a summary of oral comments at the hearings will be provided to the Pacific Council at its April meeting.

All public hearings begin at 7 p.m. at the following locations:

March 24, 2014: Chateau Westport, Beach Room, 710 W Hancock, Westport, WA 98595, telephone: (360) 268–9101.

March 24, 2014: Red Lion Hotel, South Umpqua Room, 1313 N Bayshore Drive, Coos Bay, OR 97420, telephone: (541) 267–4141.

March 25, 2014: Hilton Sonoma Wine Country, Golden Gate CD Room, 3555 Round Barn Blvd., Santa Rosa, CA 95403, telephone: (707) 523–7555.

Although non-emergency issues not contained in the STT meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

Special Accommodations

These public meetings and hearings are 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 (voice), or (503) 820–2299 (fax) at least 5 days prior to the meeting date.

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

Dated: December 4, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–29279 Filed 12–6–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0226]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Defense Manpower Data Center, DoD.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), as the matching agency under the Privacy Act is hereby giving notice to the record subjects of a computer matching program between the Office of the Inspector General (OIG), Department of Veterans Affairs (VA) and the DoD that their records are being matched by computer. The purpose of this agreement is to verify an individual's eligibility for receipt of benefits under programs administered by the Veterans Benefits Administration.

DATES: This proposed action will become effective January 8, 2014 and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Public comments must be received before January 8, 2014.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel P. Jenkins at telephone (703) 571–0070.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Defense Manpower Data Center (DMDC) and VA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of this agreement is to verify an individual's eligibility for receipt of benefits under programs administered by the Veterans Benefits Administration.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining the information needed by the VA to identify individuals that have not separated from military service and/or confirm elements of military service relevant to the adjudication of VA benefits. If this identification is not accomplished by computer matching, but is done manually, the cost would be prohibitive and it is possible that not all individuals would be identified.

A copy of the computer matching agreement between VA and DMDC is available upon request to the public. Requests should be submitted to the Director, Defense Privacy and Civil Liberties Office, 241 18th Street South, Suite 101, Arlington, VA 22202 or to the Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue NW., Washington, DC 20420.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, and an advance copy of this notice was submitted on November 27, 2013, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records about Individuals,'' February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: December 3, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program Between the Office of the Inspector General, the Department of Veterans Affairs and the Department of Defense for Verification of Eligibility

A. *Participating Agencies:* Participants in this computer matching program are the Office of the Inspector General of the Department of Veterans Affairs (VA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The VA is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the Match:* The purpose of this agreement is to verify an individual's eligibility for receipt of benefits under programs administered by the Veterans Benefits Administration.

The VA, as the source agency, will provide DMDC with two electronic files, the VA Compensation and Pension (C&P) and Veterans Assistance and Discharge System (VADS) files. The C&P file contains names of veterans, SSNs, and compensation and pension records. The VADS file contains names of veterans, SSNs, and DD214 data. Upon receipt of the electronic files, DMDC will perform a match using the SSNs in the VA C&P file and the VADS file against the DMDC Active Duty Transaction, Reserve Transaction, and Reserve Master files. DMDC will provide VA OIG an electronic listing of VA C&P and VADS records for which there is no matching record from any of the three DMDC files, and an electronic listing of records that contain data that are inconsistent with data contained in the VA C&P or VADS files. VA OIG is responsible for verifying and determining that the data on the DMDC electronic reply file are consistent with the VA source file and for resolving any discrepancies or inconsistencies on an individual basis.

C. *Authority for Conducting the Match:* The authority for VA to conduct this match is 5 U.S.C. App. 3, the Inspector General Act of 1978 (IG Act). The IG Act authorizes the VA OIG to conduct audits and investigations relating to the programs and operations of VA, IG Act, § 2. In addition, § 4 of the IG Act provides that the IG will conduct activities designed to promote economy and efficiency and to prevent and detect fraud and abuse in VA's programs and operations.

D. *Records To Be Matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

VA will use personal data from the following Privacy Act record system for the match: Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records-VA, 58VA21/22/28, April 2010.

DoD will use personal data from the following Privacy Act record system for the match: Defense Manpower Data Center Data Base—DMDC 01, published in the **Federal Register** at November 23, 2011, 76 FR 72391.

E. *Description of Computer Matching Program:* VA, as the source agency, will provide DMDC with two electronic files, the C&P and VADS files. The C&P file contains names of veterans, SSNs, and compensation and pension records. The VADS file contains names of veterans, SSNs, and DD214 data. Upon receipt of the electronic files, DMDC will perform a match using the SSNs in the VA C&P file and the VADS file against the DMDC Active Duty Transaction, Reserve Transaction, and Reserve Master files. DMDC will provide VA OIG an electronic listing of VA C&P and VADS records for which there is no matching record from any of the three DMDC files, and an electronic listing of records that contain data that are inconsistent with data contained in the VA C&P or VADS files. VA OIG is responsible for verifying and determining that the data on the DMDC electronic reply file are consistent with the VA source file and for resolving any discrepancies or inconsistencies on an individual basis.

The VADS file provided by VA contains approximately 308,000 records per year that include data elements showing veteran's name, SSN, VA claim number, Date of Birth, Date of Discharge, and Character of Service.

The C&P file provided by VA contains approximately 3.6 million records per year that includes data elements showing veteran's stub name, SSN, Date of Birth, Date of Discharge, Entitlement Code, File Number, Combined Degree of Disability, Station Number/Regional Office Number, Suspense Segment Indicator, Address Line 1, Branch of Service, Additional Service Indicator, Net Award Amount, and Net Award Date.

The Active Duty Transaction file provided by DMDC contains approximately 2.7 million records per year historically dating from 1971 to the present. This file includes data elements showing service member's name, SSN, Date of Birth, Separation Program Designator, Interservice Separation code, Date of Separation, and Branch of Service.

The Reserve Transaction file provided by DMDC contains approximately 1.5 million records per year historically dating from 1977 to the present. This file includes data elements showing reserve service member's name, SSN, Date of Birth, Separation Program Designator, Interservice Separation code, Date of Separation, and Branch of Service.

The Reserve Master file provided by DMDC contains approximately 1.3 million records per year historically dating from 1977 to the present. This file does not include character of service. However, a match on this file may indicate that the Reserve service member spent time on active duty while a member of the Reserve Forces.

F. *Inclusive Dates of the Matching Program:* This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time and thereafter on a quarterly basis. By agreement between VA and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *For Questions, Contact:* Director, Defense Privacy and Civil Liberties Office, 241 18th Street South, Suite 101, Arlington, VA 22202. Telephone (703) 571–0070.

[FR Doc. 2013–29216 Filed 12–6–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board Winter Plenary Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3.140 through 160, the Department of the Army announces the following committee meeting:

Name of Committee: Army Science Board (ASB) Winter Plenary Session.

Date: January 15, 2014.

Time: 0830–0945.

Location: Grand Hyatt San Antonio, 600 E. Market Street, San Antonio, TX 78205.

Purpose of Meeting: The purpose of the meeting is for the Army Science Board to review the results of the FY13 study titled, ''Creating an Innovation Culture in the Army'' in an open session and begin work on the FY14 study topics.

Agenda: The board will convene on January 15, 0830–0945, at the hotel

conference facility to conduct a public vote on the results of the Fiscal Year 2013 ''Creating an Innovation Culture'' Study. The ASB board members will cast a vote to accept the results of this study and record that vote for the record according to the Army Science Board Bylaws, Article VII, Section 2 and Sunshine in the Government Act of 1976.

Committee's Designated Federal Officer (DFO)/Point of Contact: COL William McLagan at (703) 545–8651 or email: *william.m.mclagan.mil@mail.mil* or Ms. Carolyn German at (703) 545–8654 or email: *carolyn.t.german.civ@mail.mil.*

SUPPLEMENTARY INFORMATION (Filing Written Statement): Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement for consideration by the Subcommittees. Individuals submitting a written statement must submit their statement to the Designated Federal Officer (DFO) at the address listed below. Written statements not received at least 10 calendar days prior to the meeting may not be considered by the Board prior to its scheduled meeting.

The DFO will review all timely submissions with the Board's executive committee and ensure they are provided to the specific study members as necessary before, during, or after the meeting. After reviewing written comments, the study chairs and the DFO may choose to invite the submitter of the comments to orally present their issue during a future open meeting.

The DFO, in consultation with the executive committee, may allot a specific amount of time for members of the public to present their issues for discussion.

FOR FURTHER INFORMATION CONTACT: Army Science Board, Designated Federal Officer, 2530 Crystal Drive, Suite 7098, Arlington,VA 22202.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–29250 Filed 12–6–13; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13005–003]

Oliver Hydro LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 13005–003.

c. *Date filed:* December 14, 2011.

d. *Applicant:* Oliver Hydro LLC.

e. *Name of Project:* William Bacon Oliver Lock and Dam Hydroelectric Project.

f. *Location:* At the U.S. Army Corps of Engineers' (Corps) William Bacon Oliver Lock and Dam on the Black Warrior River, in Tuscaloosa County, Alabama. The project would occupy 8.7 acres of United States lands administered by the Corps' Mobile District.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Vincent A. Lamarra, Symbiotics LLC, 975 South State Highway, Logan, UT 84321; (435) 752–2580; or email at *vincent.lamarra@symbioticsenergy.com.*

i. *FERC Contact:* Michael Spencer at (202) 502–8365, or via email at *michael.spencer@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–13005–003.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is now ready for environmental analysis.

l. The proposed project would utilize the Corps' existing William Bacon Oliver Lock and Dam, and would consist of the following new facilities: (1) A forebay; (2) an intake structure; (3) a powerhouse containing two generating units with a total capacity of 11.72 megawatts (MW); (4) a 150-foot-long, 68-foot-wide tailrace; (5) a proposed 1.7-mile-long, 25 kilovolt (kV) transmission line; (6) a switchyard; and (7) appurtenant facilities. The proposed project would have an average annual generation of 42.6 GWh, and operate in a run-of-river mode utilizing surplus water from the William Bacon Oliver Lock and Dam, as directed by the Corps.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in

accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: December 2, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–29328 Filed 12–6–13; 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: ER10–2253–009.
Applicants: Astoria Energy LLC.
Description: Notice of Non-material Change in Status of Astoria Energy LLC.
Filed Date: 11/27/13.
Accession Number: 20131127–5056.
Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: ER11–2447–001.
Applicants: Pacific Northwest Generating Cooperative, Inc.
Description: Notice of change in status of Pacific Northwest Generating Cooperative, Inc.
Filed Date: 11/26/13.
Accession Number: 20131126–5189.
Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–97–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Supplement to October 15, 2013 Midcontinent Independent System Operator, Inc. tariff filing.
Filed Date: 11/25/13.
Accession Number: 20131125–5128.
Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: ER14–116–001.
Applicants: American Electric Power Service Corporation, Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.
Description: AEP submits an amendment to the 39th Revised Service Agmt No. 1336 in ER14–116 to be effective 9/19/2013.
Filed Date: 11/26/13.
Accession Number: 20131126–5163.
Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–161–001.
Applicants: American Electric Power Service Corporation, AEP Indiana Michigan Transmission Company, Indiana Michigan Power Company, Wabash Valley Power Association, Inc., PJM Interconnection, L.L.C.
Description: AEP submits an Amendment to the 10th Revised ILDSA–PJM SA No. 1262 in ER14–161 to be effective 4/11/2013.
Filed Date: 11/26/13.
Accession Number: 20131126–5176.
Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–172–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits Supplement to Conforming Filing to be effective N/A.
Filed Date: 11/27/13.
Accession Number: 20131127–5083.
Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: ER14–463–000.
Applicants: ISO New England Inc.
Description: Exigent Circumstances Filing of Revisions to FCM Rules to be effective 1/24/2014.
Filed Date: 11/25/13.
Accession Number: 20131125–5196.
Comments Due: 5 p.m. ET 12/16/13.

Docket Numbers: ER14–474–000.
Applicants: Sempra Generation.
Description: Sempra Generation LLC Notice of Succession and MBR Tariff to be effective 11/27/2013.
Filed Date: 11/26/13.
Accession Number: 20131126–5115.
Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–475–000.
Applicants: New York Independent System Operator, Inc., Rochester Gas and Electric Corporation
Description: LGIA between RG&E and Allegany Generator, SA No. 2036 to be effective 11/1/2013.
Filed Date: 11/26/13.
Accession Number: 20131126–5125.
Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–476–000.
Applicants: Portsmouth Genco, LLC.
Description: 2nd Rev MBR to be effective 11/27/2013.
Filed Date: 11/26/13.
Accession Number: 20131126–5131.
Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–477–000.
Applicants: Red Oak Power, LLC.
Description: 2nd Rev MBR to be effective 11/27/2013.
Filed Date: 11/26/13.
Accession Number: 20131126–5132.
Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–478–000.
Applicants: James River Genco, LLC.
Description: 2nd Revised MBR to be effective 11/27/2013.
Filed Date: 11/26/13.
Accession Number: 20131126–5148.
Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–479–000.
Applicants: Great Bay Energy V, LLC.
Description: Baseline new to be effective 12/1/2013.
Filed Date: 11/26/13.
Accession Number: 20131126–5150.
Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–480–000.
Applicants: California Independent System Operator Corporation.
Description: 2013–11–26_Order764MarketChanges to be effective 4/1/2014.
Filed Date: 11/26/13.
Accession Number: 20131126–5175.
Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–481–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Smoky Mountain IA Filing to be effective 11/1/2013.
Filed Date: 11/27/13.
Accession Number: 20131127–5002.
Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: ER14–482–000.
Applicants: DTE Electric Company.
Description: DTE Electric Company submits Revised Wholesale Distribution Agreements to be effective 1/1/2014.
Filed Date: 11/27/13.
Accession Number: 20131127–5040.
Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: ER14–483–000.
Applicants: Niagara Mohawk Power Corporation.
Description: Notice of Cancellation of Grandfathered Network Integration Transmission Service Agreement No. 118 of Niagara Mohawk Power Corporation.
Filed Date: 11/26/13.
Accession Number: 20131126–5187.
Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–484–000.
Applicants: Niagara Mohawk Power Corporation.

Description: Notice of Cancellation of Grandfathered Network Integration Transmission Service Agreement No. 120 of Niagara Mohawk Power Corporation.
Filed Date: 11/26/13.
Accession Number: 20131126–5191.
Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–485–000.
Applicants: Tucson Electric Power Company.
Description: Tucson Electric Power Company submits TEP Order No. 784 Compliance Filing to be effective 1/27/2014.
Filed Date: 11/27/13
Accession Number: 20131127–5065.
Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: ER14–486–000.
Applicants: UNS Electric, Inc.
Description: UNS Electric, Inc. submits UNSE Order No. 784 Compliance Filing to be effective 1/27/2014.
Filed Date: 11/27/13.
Accession Number: 20131127–5064.
Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: ER14–487–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: ISO New England Inc. submits Revisions to FA for Non-Commercial Capacity in the FCM to be effective 3/28/2014.
Filed Date: 11/27/13.
Accession Number: 20131127–5066.
Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: ER14–488–000.
Applicants: KATBRO LLC.
Description: Katbro LLC submits notice of cancellation of its market-based rate tariff, effective 9/30/13.
Filed Date: 11/26/13.
Accession Number: 20131126–0013.
Comments Due: 5 p.m. ET 12/17/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 27, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–29199 Filed 12–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–216–000.
Applicants: Ruby Pipeline, L.L.C.
Description: FL&U Effective 1_1_14 to be effective 1/1/2014.
Filed Date: 11/26/13.
Accession Number: 20131126–5043.
Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: RP14–217–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: Colorado Interstate Gas Company, L.L.C. submits tariff filing per 154.403(d)(2): FL&U to be effective January 1, 2014 to be effective 1/1/2014.
Filed Date: 11/26/13.
Accession Number: 20131126–5064.
Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: RP14–218–000.
Applicants: High Island Offshore System, L.L.C.
Description: HIOS Rate Case RP14–XXX to be effective 1/1/2014.
Filed Date: 11/26/13.
Accession Number: 20131126–5108.
Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: RP14–219–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Negotiated Rate Filing—NJR Energy LPS–RO 143915 to be effective 12/1/2013.
Filed Date: 11/26/13.
Accession Number: 20131126–5109.
Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: RP14–220–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 11/26/13 Negotiated Rates—Trafigura AG (HUB) 7445–89 to be effective 11/27/2013.
Filed Date: 11/26/13.
Accession Number: 20131126–5126.
Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: RP14–221–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Annual Recomputation of FL&U Retention Percentages to be effective 1/1/2014.
Filed Date: 11/26/13.
Accession Number: 20131126–5133.
Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: RP14–222–000.
Applicants: Honeoye Storage Corporation.
Description: November 2013 to be effective 1/1/2014.
Filed Date: 11/26/13.
Accession Number: 20131126–5159.
Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: RP14–223–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: Non-Conforming Agreements Update Filing to be effective 1/1/2014.
Filed Date: 11/26/13.
Accession Number: 20131126–5161.
Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: RP14–224–000.
Applicants: WTG Hugoton, LP.
Description: WTG Hugoton, LP 2013 Annual Charge Adjustment to be effective 10/1/2013.
Filed Date: 11/26/13.
Accession Number: 20131127–5000.
Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: RP14–225–000.
Applicants: Questar Pipeline Company.
Description: Questar Pipeline Company submits tariff filing per 154.203: Non-Conforming Agreements Update to be effective 2/1/2014.
Filed Date: 11/27/13.
Accession Number: 20131127–5049.
Comments Due: 5 p.m. ET 12/9/13.

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 27, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–29314 Filed 12–6–13; 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: EC14–34–000.
Applicants: Entergy Texas, Inc.
Description: Application for Section 203 transaction approval authorization of Entergy Texas, Inc.
Filed Date: 12/2/13.
Accession Number: 20131202–5147.
Comments Due: 5 p.m. ET 12/23/13.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG14–15–000.
Applicants: Ameren Energy Generating Company.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 11/29/13.
Accession Number: 20131129–5040.
Comments Due: 5 p.m. ET 12/20/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3135–002.
Applicants: Noble Great Plains Windpark, LLC.
Description: Notice of Non-Material Change in Status of Noble Great Plains Windpark, LLC.
Filed Date: 12/2/13.
Accession Number: 20131202–5137.
Comments Due: 5 p.m. ET 12/23/13.

Docket Numbers: ER12–1888–001; ER12–1890–001; ER12–1891–001; ER12–1892–001; ER12–1893–001; ER12–1894–001.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc., et al Compliance Filing of revised bandwidth calculations.
Filed Date: 11/29/13.
Accession Number: 20131129–5039.
Comments Due: 5 p.m. ET 12/20/13.

Docket Numbers: ER14–503–000.
Applicants: PJM Interconnection, L.L.C.
Description: Revisions to the PJM OATT and RAA re Capacity Import Limit to be effective 1/31/2014.
Filed Date: 11/29/13.
Accession Number: 20131129–5027.
Comments Due: 5 p.m. ET 12/20/13.

Docket Numbers: ER14–504–000.
Applicants: PJM Interconnection, L.L.C.
Description: Revisions to the PJM OATT and RAA re Clearing Limited and ES DR Filing to be effective 1/31/2014.
Filed Date: 11/29/13.
Accession Number: 20131129–5028.
Comments Due: 5 p.m. ET 12/20/13.

Docket Numbers: ER14–505–000.
Applicants: Duke Energy Florida, Inc.
Description: SECI NITSA Amendment (2013) to be effective 1/1/2014 under ER14–505 Filing Type: 10.
Filed Date: 12/2/13.
Accession Number: 20131202–5032.
Comments Due: 5 p.m. ET 12/23/13.

Docket Numbers: ER14–506–000.
Applicants: Biofuels Washington LLC.
Description: Biofuels Washington LLC submits Petition for Order Accepting Initial Tariff, Waivers and Blanket Authority to be effective 12/2/2013.
Filed Date: 12/2/13.
Accession Number: 20131202–5075.
Comments Due: 5 p.m. ET 12/23/13.

Docket Numbers: ER14–507–000.
Applicants: Bangor Hydro Electric Company.
Description: Bangor Hydro Electric Company submits Notice of Succession to Bangor Hydro Electric Company Service Agreements to be effective 1/1/2014.
Filed Date: 12/2/13.
Accession Number: 20131202–5094.
Comments Due: 5 p.m. ET 12/23/13.

Docket Numbers: ER14–508–000.
Applicants: Bangor Hydro Electric Company.
Description: Bangor Hydro Electric Company submits Filing to Effect Cancellation of Existing eTariff Database to be effective 1/1/2014.
Filed Date: 12/2/13.
Accession Number: 20131202–5110.
Comments Due: 5 p.m. ET 12/23/13.

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: December 2, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–29313 Filed 12–6–13; 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: EC14–34–000.
Applicants: Entergy Texas, Inc.
Description: Application for Section 203 transaction approval authorization of Entergy Texas, Inc.
Filed Date: 12/2/13.
Accession Number: 20131202–5147.
Comments Due: 5 p.m. ET 12/23/13.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG14–15–000.
Applicants: Ameren Energy Generating Company.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 11/29/13.
Accession Number: 20131129–5040.
Comments Due: 5 p.m. ET 12/20/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3135–002.
Applicants: Noble Great Plains Windpark, LLC.
Description: Notice of Non-Material Change in Status of Noble Great Plains Windpark, LLC.
Filed Date: 12/2/13.
Accession Number: 20131202–5137.
Comments Due: 5 p.m. ET 12/23/13.

Docket Numbers: ER12–1888–001; ER12–1890–001; ER12–1891–001; ER12–1892–001; ER12–1893–001; ER12–1894–001.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc., et al Compliance Filing of revised bandwidth calculations.
Filed Date: 11/29/13.
Accession Number: 20131129–5039.
Comments Due: 5 p.m. ET 12/20/13.

Docket Numbers: ER14–503–000.
Applicants: PJM Interconnection, L.L.C.
Description: Revisions to the PJM OATT and RAA re Capacity Import Limit to be effective 1/31/2014.
Filed Date: 11/29/13.
Accession Number: 20131129–5027.
Comments Due: 5 p.m. ET 12/20/13.

Docket Numbers: ER14–504–000.
Applicants: PJM Interconnection, L.L.C.
Description: Revisions to the PJM OATT and RAA re Clearing Limited and ES DR Filing to be effective 1/31/2014.

Filed Date: 11/29/13.
Accession Number: 20131129–5028.
Comments Due: 5 p.m. ET 12/20/13.

Docket Numbers: ER14–505–000.
Applicants: Duke Energy Florida, Inc.
Description: SECI NITSA Amendment (2013) to be effective 1/1/2014 under ER14–505 Filing Type: 10.
Filed Date: 12/2/13.
Accession Number: 20131202–5032.
Comments Due: 5 p.m. ET 12/23/13.

Docket Numbers: ER14–506–000.
Applicants: Biofuels Washington LLC.
Description: Biofuels Washington LLC submits Petition for Order Accepting Initial Tariff, Waivers and Blanket Authority to be effective 12/2/2013.
Filed Date: 12/2/13.
Accession Number: 20131202–5075.
Comments Due: 5 p.m. ET 12/23/13.

Docket Numbers: ER14–507–000.
Applicants: Bangor Hydro Electric Company.
Description: Bangor Hydro Electric Company submits Notice of Succession to Bangor Hydro Electric Company Service Agreements to be effective 1/1/2014.
Filed Date: 12/2/13.
Accession Number: 20131202–5094.
Comments Due: 5 p.m. ET 12/23/13.

Docket Numbers: ER14–508–000.
Applicants: Bangor Hydro Electric Company.
Description: Bangor Hydro Electric Company submits Filing to Effect Cancellation of Existing eTariff Database to be effective 1/1/2014.
Filed Date: 12/2/13.
Accession Number: 20131202–5110.
Comments Due: 5 p.m. ET 12/23/13.

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: December 2, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–29200 Filed 12–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–7276–000]

Brown, Paul H.; Notice of Filing

Take notice that on November 27, 2013, Paul H. Brown submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act (FPA), 16 U.S.C. 825d(b), Part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45, and Order No. 664.[1]

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 18, 2013

[1] *Commission Authorization to Hold Interlocking Positions,* 112 FERC ¶ 61,298 (2005) (Order No. 664); *order on reh'g,* 114 FERC ¶ 61,142 (2006) (Order No. 664–A).

Dated: November 29, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–29331 Filed 12–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–7275–000]

Obenshain, R. Dodd; Notice of Filing

Take notice that on November 27, 2013, R. Dodd Obenshain submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act (FPA), 16 U.S.C. 825d(b), Part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR Part 45, and Order No. 664.[1]

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

[1] *Commission Authorization to Hold Interlocking Positions,* 112 FERC ¶ 61,298 (2005) (Order No. 664); *order on reh'g,* 114 FERC ¶ 61,142 (2006) (Order No. 664–A).

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 18, 2013.

Dated: November 29, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–29330 Filed 12–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–7274–000]

Harmon, Steven A.; Notice of Filing

Take notice that on November 27, 2013, Steven A. Harmon submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act (FPA), 16 U.S.C. 825d(b), Part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR Part 45, and Order No. 664.[1]

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 18, 2013.

Dated: November 29, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–29329 Filed 12–6–13; 8:45 am]

BILLING CODE 6717–01–P

[1] *Commission Authorization to Hold Interlocking Positions,* 112 FERC ¶ 61,298 (2005) (Order No. 664); *order on reh'g,* 114 FERC ¶ 61,142 (2006) (Order No. 664–A).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–1025–000]

FPL Energy Wyoming, 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 FPL Energy Wyoming, 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 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 issuances of securities and assumptions of liability is December 13, 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: December 3, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–29315 Filed 12–6–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9903–93–Region–6]

Public Water System Supervision Program Revision for the State of Oklahoma

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Oklahoma is revising its approved Public Water System Supervision Program. Oklahoma has adopted three EPA drinking water rules, namely the: (1) Long Term 2 Enhanced Surface Water Treatment Rule (LT2), (2) the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBP2), and (3) the Ground Water Rule (GWR). EPA has determined that the proposed LT2, DBP2, and the GWR submitted by Oklahoma are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve this program revision.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by January 8, 2014 to the Regional Administrator at the EPA Region 6 address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by January 8, 2014, a public hearing will be held. If no timely and appropriate request for a hearing is received and the

Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on January 8, 2014. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Oklahoma Department of Environmental Quality, Water Quality Division, 707 N. Robinson, Oklahoma City, Oklahoma 73101–1677; and United States Environmental Protection Agency, Region 6, Drinking Water Section (6WQ–SD), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Nichole Foster, EPA Region 6, Drinking Water Section at the Dallas address given above, or by telephone at (214) 665–7248, or by email at *foster.nichole@epa.gov*.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR Part 142 of the National Primary Drinking Water Regulations.

Dated: November 26, 2013.

Sam Coleman,

Acting Regional Administrator.

[FR Doc. 2013–29346 Filed 12–6–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank); Notice of Open Meeting

SUMMARY: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

Time and Place: Wednesday, December 18, 2013 from 9:30 a.m.–1:30 p.m. A break for lunch will be at the expense of the attendee. Security processing will be necessary for reentry into the building. The meeting will be held at Ex-Im Bank in the Main Conference Room 321, 811 Vermont Avenue NW., Washington, DC 20571.

Agenda: Agenda items include a briefing for the Advisory Committee members on Bank challenges for 2014, a discussion of the Advisory members roles and responsibilities of an Advisory Committee member, and an ethics briefing.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building, you may contact Richard Thelen at *richard.thelen@exim.gov* to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please email Richard Thelen at *richard.thelen@exim.gov* prior to December 11, 2013.

Members of the Press: For members of the Press planning to attend the meeting, a photo ID must be presented at the guard's desk as part of the clearance process into the building please email Jamie Radice at *jamie.radice@exim.gov* to be placed on an attendee list.

FOR FURTHER INFORMATION CONTACT: Richard Thelen, 811 Vermont Avenue NW., Washington, DC 20571, (202) 565–3515.

Cristopolis Dieguez,

Program Specialist, Office of the General Counsel.

[FR Doc. 2013–29233 Filed 12–6–13; 8:45 am]

BILLING CODE 6690–01–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

Date and Time: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 12, 2013, from 1:00 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102. Submit attendance requests via email to *VisitorRequest@FCA.gov*. See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- September 12, 2013

B. Business Reports

- September 30, 2013 Financial Reports
- Report on Insured and Other Obligations
- Quarterly Report on Annual Performance Plan

Closed Session

- Confidential Report on System Performance
- Audit Plan for the Year Ended December 31, 2013

Executive Session

- Executive Session of the FCSIC Board Audit Committee with the External Auditor

Dated: December 4, 2013.

Dale L. Aultman,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2013–29297 Filed 12–6–13; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 7, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* <*mailto:PRA@fcc.gov*> and to *Cathy.Williams@fcc.gov* <*mailto:Cathy.Williams@fcc.gov*>.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1043.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, FCC 04–137.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 7 respondents; 8 responses.

Estimated Time per Response: 8 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirement is contained in section 225 of the Communications Act of 1934, as amended [47 U.S.C. 225], Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals; The Americans with Disabilities Act of 1990 (ADA), Public Law 101–336, 104 Stat. 327, 366–69, was enacted on July 26, 1990.

Total Annual Burden: 64 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The reporting requirements included under OMB Control Number 3060–1043 enable the Commission to collect waiver reports from Telecommunications Relay Service (TRS) providers requesting waivers from certain TRS mandatory minimum standards. On June 30, 2004, the Commission released a Report and Order and Order on Reconsideration in *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* FCC 04–137, published at 69 FR 53346, September 1, 2004 and at 69 FR 53382, September 1, 2004. In the Report and Order, the Commission harmonized the expiration dates of waivers for Video Relay Service and Internet-Protocol (IP) Relay providers of the following TRS mandatory minimum requirements, amongst others: (1) 47 CFR 64.604(a)(3)(vi)—call release; and (2) 47 CFR 64.604(b)(3)—equal access to interexchange carriers. The Commission also conditioned these waivers on providers submitting annual reports to the Commission, in a narrative form, detailing: (1) The provider's plan or general approach to meet the waived standards; (2) any additional costs that would be required to meet the standards; (3) the development of any new technology that may affect the particular waivers; (4) the progress made by the provider to meet the standards; (5) the specific steps taken to resolve any technical problems that prohibit the provider from meeting the standards; and (6) any other factors relevant to whether the waiver should continue in effect. On January 11, 2007, the Commission released a Declaratory Ruling in *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service,* FCC 06–182, published at 72 FR 6960, February 14, 2007. The ruling applied several of the waivers to IP captioned telephone relay service, also conditioned on the filing of annual reports, as described above.

OMB Control Number: 3060–0550.

Title: Local Franchising Authority Certification, Form FCC 328.

Type of Review: Extension of a currently approved collection.

Respondents: State, Local or Tribal Government.

Number of Respondents and Responses: 20 respondents; 20 responses.

Estimated Time per Response: 30 minutes.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. 543.

Total Annual Burden: 10 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On May 3, 1993, the Commission released a Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92–266, FCC 93–177; In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation. Among other things, the Report and Order implemented Section 3(a) of the Cable Television Consumer Protection and Competition Act of 1992 wherein a local franchise authority (''LFA'') must file with the Commission a written certification when it seeks to regulate basic service cable rates. Subsequently, the Commission developed FCC Form 328 to provide a standardized, simple form for LFAs to use when requesting certification.

OMB Control Number: 3060–0423.

Title: Section 73.3588, Dismissal of Petitions to Deny or Withdrawal of Informal Objections.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents and Responses: 50 respondents; 50 responses.

Estimated Time per Response: 20 minutes.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 17 hours.

Total Annual Cost: $63,750.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 73.3588 states whenever a petition to deny or an informal objection has been filed against any applications for renewal, new construction permits, modifications, and transfers/assignments, and the filing party seeks to dismiss or withdraw the petition to deny or the informal objection, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal. This request must include the following documents: (1) A copy of any written agreement related to the dismissal or withdrawal, (2) an affidavit stating that the petitioner has not received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition, (3) an itemization of the expenses for which it is seeking reimbursement, and (4) the terms of any oral agreements related to the dismissal or withdrawal of the petitions to deny. Each remaining party to any written or oral agreement must submit an affidavit within 5 days of petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The affidavit must also include the terms of any oral agreements relating to the dismissal or withdrawal of the petition to deny.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–29217 Filed 12–6–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimates; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB Control Number.

DATES: Written PRA comments should be submitted on or before January 8, 2014. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Leslie Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov.* To submit your PRA comments by email, send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie Smith, OMD, FCC, at 202–418–0217, or via the Internet at: *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Comprehensive Market Data Collection for Interstate Special Access Services, FCC 12–153.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 6,400 respondents; 6,400 responses.

Estimated Time per Response: 146 hours.

Frequency of Response: One-time reporting and recordkeeping requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 154(j), 155, 201, 202, 203, 204, 205, 211, 215, 218, 219, 303(r), 332, 403, 503, and section 706 of the Communications Act of 1934, as amended.

Total Annual Burden: 934,400 hours.

Total Annual Cost: $10,000,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: This collection calls for the submission of data and information that is commercially and competitively sensitive. The Commission plans to issue a *Protective Order* specifically for this data collection outlining the procedures for handling and treating the information. The *Protective Order* will provide limited access to the competitively sensitive information for certain representatives of persons participating in the proceeding, while protecting that competitively sensitive information from improper disclosure, and thereby will serve the public interest.

Needs and Uses: In a December 2012 *Report and Order,* FCC 12–153, 78 FR 2572 (Jan. 11, 2013), the Commission initiated a comprehensive special access data collection and specified the nature of the data to be collected and the scope of respondents. In conjunction with the market analysis proposed by the Commission in the December 2012 *Further Notice of Proposed Rulemaking,* FCC 12–153, 78 FR 2600 (Jan. 11, 2013), the data, information, and documents acquired through this new collection will aid the Commission in conducting a comprehensive evaluation of special access competition and updating its rules for pricing flexibility for special access services. Pursuant to authority delegated by the Commission, the Wireline Competition Bureau (Bureau) released a *Report and Order* in September 2013, DA 13–1909, 78 FR 67053 (Nov. 8, 2013), included in our submission to OMB, that (1) clarified

the scope of the collection to reduce burden where doing so is consistent with our delegated authority and will not impact the Commission's ability to analyze the data; (2) provided instructions and record format specifications for submitting information; and (3) modified and amended questions and definitions contained in the collection.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–29235 Filed 12–6–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request Re: Procedures for Monitoring Bank Secrecy Act Compliance

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. As part of its continuing effort to reduce paperwork and respondent burden, the FDIC invites the general public and other Federal agencies to take this opportunity to comment on renewal of its *Procedures for Monitoring Bank Secrecy Act Compliance* information collection (OMB No. 3064–0087). At the end of the comment period, any comments and recommendations received will be analyzed to determine the extent to which the collections should be modified prior to submission to OMB for review and approval.

DATES: Comments must be submitted on or before February 7, 2014.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room NYA–5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION: *Proposal to renew the following currently approved collections of information:*

Title: Procedures for Monitoring Bank Secrecy Act Compliance.

OMB Number: 3064–0087.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks and state savings associations.

Estimated Number of Respondents: 4881 (4,166 small institutions, 694 medium institutions, 21 large institutions).

Estimated Time per Response: 35 hours—small institutions, 250 hours—medium institutions, 450 hours—large institutions.

Total Estimated Annual Burden: 328,760 hours.

General Description of Collection: Respondents must establish and maintain procedures designed to monitor and ensure their compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated by the Department of Treasury at 31 CFR part 103. Respondents must also provide training for appropriate personnel.

Request for Comments

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 4th day of December, 2013.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2013–29292 Filed 12–6–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: December 11, 2013; 10:00 a.m.

PLACE: 800 N. Capitol Street NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be held in open session; the remainder will be held in closed session.

MATTERS TO BE CONSIDERED:

Open Session

1. Briefing on U.S.—China Bilateral Maritime Agreement Annual Consultation

Closed Session

1. Update on Economic and Liner Trade Conditions
2. Staff Recommendation on Show Cause Order Concerning an Ocean Transportation License Revocation

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523 5725.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–29373 Filed 12–5–13; 11:15 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank

indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 3, 2014.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Mesa Financial Corporation,* Sweetwater, Texas; to acquire 100 percent of the voting shares of South Taylor County Bancshares, Inc., and thereby indirectly acquire voting shares of First State Bank in Tuscola, both in Tuscola, Texas.

Board of Governors of the Federal Reserve System, December 4, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–29271 Filed 12–6–13; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice-MV–2013–03; Docket No. 2013–0002; Sequence 37]

Public Availability of General Services Administration FY 2013 Federal Activities Inventory Reform (FAIR) Act Inventory

AGENCY: General Services Administration (GSA).

ACTION: Notice of public availability of FY 2013 Federal Activities Inventory Reform (FAIR) Act Inventory.

SUMMARY: In accordance with the Federal Activities Inventory Reform (FAIR) Act of 1998, Public Law 105–270, and Office of Management and Budget (OMB) Circular A–76, General Services Administration (GSA) is publishing this notice to advise the public of the availability of the FY 2013 FAIR Act Inventory.

DATES: December 9, 2013.

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Mr. Paul F. Boyle in the Office of Acquisition Policy at 202–501–0324 or *Paul.Boyle@gsa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Federal Activities Inventory Reform (FAIR) Act of 1998, Public Law 105–270, and Office of Management and Budget (OMB) Circular A–76, General Services Administration (GSA) is publishing this notice to advise the public of the availability of the FY 2013 FAIR Act Inventory. This inventory provides information on commercial and inherently governmental activities performed by GSA employees. The inventory has been developed in accordance with guidance issued on March 26, 2012, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at: *www.gsa.gov/fairact.* GSA has posted its inventory on the *gsa.gov* homepage at the following link: *http://www.gsa.gov/fairact.*

Dated: December 3, 2013.

Houston Taylor,

Acting Senior Procurement Executive & Deputy Chief Acquisition Officer, Office of Acquisition Policy, General Services Administration.

[FR Doc. 2013–29207 Filed 12–6–13; 8:45 am]

BILLING CODE 6820–61–P

OFFICE OF GOVERNMENT ETHICS

Privacy Act of 1974; Amendment to System of Records

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of Modification of Routine Uses (a.) and (l.) in OGE/GOVT–1 System of Records.

SUMMARY: The U.S. Office of Government Ethics (OGE) proposes to modify existing routine uses (a.) and (l.) to OGE/GOVT–1, Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records (OGE/GOVT–1 System of Records). This action is necessary to comply with the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency (5 U.S.C. 552a(e)(4)). OGE last published OGE/GOVT–1 at 68 FR 3098–3109 (January 22, 2003), as corrected at 68 FR 24744 (May 8, 2003). An additional routine use was added to OGE/GOVT–1 at 76 FR 24489 (May 2, 2011) and modified at 77 FR 45353 (July 31, 2012).

DATES: This action will be effective without further notice on January 8, 2014 unless comments received before this date would result in a contrary determination.

ADDRESSES: You may submit comments to OGE on this Privacy Act Notice by any of the following methods:

Email: usoge@oge.gov (Include reference to ''Privacy Act OGE/GOVT–1 Modified Routine Uses'' in the subject line of the message).

Fax: 202–482–9237, Attention: Diana Veilleux, Privacy Officer.

Mail, Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington DC 20005–3917, Attention: Diana Veilleux, Privacy Officer.

All comments received will be posted without change on the OGE Web site, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Diana Veilleux, Privacy Officer, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917; Telephone: 202–482–9203; TTY: 800–877–8339; FAX: 202–482–9237; Email: *Diana.veilleux@oge.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, this document provides public notice that OGE is proposing to amend the OGE/GOVT–1 System of Records. The amendments will modify routine use (a.) to update the references to provisions in the Ethics in Government Act (EIGA), 5 U.S.C. app. 101, regarding procedures that must be met by any person before access to the records maintained in the system may be granted. Specifically, the amendments add a citation to section 402(b)(1) of EIGA, which references the OGE Director's authority to establish procedures for providing public availability of financial disclosure reports.

The amendments also modify routine use (l.) to restore the routine use to its original language as set forth at 76 FR 24489 (May 2, 2011). Routine use (l.) was modified at 77 FR 45353 (July 31, 2012) to implement provisions of the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act), Public Law 112–105 (April 4, 2012), which required posting on agency web .sites all public financial disclosure reports. The STOCK Act was subsequently amended by Public Law 113–7 (April 14, 2013) to limit the posting requirement to public financial disclosure reports of officials occupying Executive Level I and II positions, making the 2012 amendments to modify routine use (l.) no longer necessary.

The system report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Homeland Security and Governmental Affairs of the United States Senate, the Committee on Oversight and Government Reform of the House of Representatives and the Office of Management and Budget.

Routine Use (a.)

(a.) to disclose the information furnished by the reporting official, in accordance with sections 105 and 402(b)(1) of the Ethics in Government Act of 1978, 5 U.S.C. app. 101, as amended, to any requesting person.

Routine Use (l.)

(l.) to disclose on the OGE Web site and to otherwise disclose to any person, including other departments and agencies, any written ethics agreements filed with the Office of Government Ethics, pursuant to 5 CFR 2634.803, by an individual nominated by the President to a position requiring Senate confirmation when the position also requires the individual to file a public financial disclosure report.

Approved: December 2, 2013.

Walter M. Shaub, Jr.,

Director, Office of Government Ethics.

[FR Doc. 2013–29342 Filed 12–6–13; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: 0990–20967–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new generic clearance. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before January 8, 2014.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier 0990–20967–30D for reference.

Information Collection Request Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (ASPE)

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is requesting a generic clearance from the OMB for purposes of conducting qualitative research. ASPE conducts qualitative research to gain a better understanding of emerging health policy issues, develop future intramural and extramural research projects, and to ensure HHS leadership, agencies and offices have recent data and information to inform program and policy decision-making.

Need and Proposed Use of the Information: ASPE's mission is to advise the Secretary of the Department of Health and Human Services on policy development in health, disability, human services, data, and science, and provides advice and analysis on economic policy. ASPE leads special initiatives, coordinates the Department's evaluation, research and demonstration activities, and manages cross-Department planning activities such as strategic planning, legislative planning, and review of regulations. Integral to this role, ASPE conducts research and evaluation studies, develops policy analyses, and estimates the cost and benefits of policy alternatives for HHS related programs.

The goal of developing these activities is to identify emerging policy issues and research gaps to ensure the successful implementation of HHS programs.

Likely Respondents: Policy experts, national, state and local health representatives, healthcare providers, and representatives of other health organizations.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Types of collections	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Interviews, focus groups, questionnaires and other qualitative methods	747	1	1	747

Keith A. Tucker,

Information Collection Clearance Officer.

[FR Doc. 2013–29204 Filed 12–6–13; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF AGRICULTURE

Announcement of the Second 2015 Dietary Guidelines Advisory Committee Meeting

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health; and U.S. Department of Agriculture, Food, Nutrition and Consumer Services and Research, Education, and Economics.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act (FACA), the U.S. Department of Health and Human Services (HHS), in collaboration with the U.S. Department of Agriculture (USDA), is hereby giving notice that a meeting of the 2015 Dietary Guidelines Advisory Committee (DGAC) will be held and will be open to the public. This meeting was originally scheduled for October 3–4, 2013, but was postponed due to the government shutdown.

DATES: This meeting will be held on January 13, 2014, from 8:00 a.m.–11:30 a.m. E.S.T. and January 14, 2014, from 8:00 a.m.–4:45 p.m. E.S.T. If the federal government in the Washington, DC area is closed for inclement weather on these days, the meeting will be canceled. The Office of Personnel Management notifies federal staff and the public of this at *http://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/current-status/.*

ADDRESSES: The meeting will be accessible by webcast on the Internet or by attendance in-person. For in-person participants, the meeting will take place in the National Institutes of Health (NIH) Porter Building (Building 35), 9000 Rockville Pike, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer (DFO), 2015 DGAC, Richard D. Olson, M.D., M.P.H.; Office of Disease Prevention and Health Promotion, OASH/HHS; 1101 Wootton Parkway, Suite LL100 Tower Building; Rockville, MD 20852: Telephone: (240) 453–8280; Fax: (240) 453–8281; Lead USDA Co-Executive Secretary, Colette I. Rihane, M.S., R.D., Director, Nutrition Guidance and Analysis Division, Center for Nutrition Policy and Promotion, USDA; 3101 Park Center Drive, Room 1034; Alexandria, VA 22302; Telephone: (703) 305–7600; Fax: (703) 305–3300; and/or USDA Co-Executive Secretary, Shanthy A. Bowman, Ph.D., Nutritionist, Food Surveys Research Group, Beltsville Human Nutrition Research Center, Agricultural Research Service, USDA; 10300 Baltimore Avenue, BARC-West Bldg 005, Room 125; Beltsville, MD 20705–2350; Telephone: (301) 504–0619. Additional information about the 2015 DGAC and this meeting is available on the Internet at *www.DietaryGuidelines.gov.*

SUPPLEMENTARY INFORMATION: Under Section 301 of Public Law 101–445 (7 U.S.C. 5341, the National Nutrition Monitoring and Related Research Act of 1990, Title III) the Secretaries of Health and Human Services (HHS) and Agriculture (USDA) are directed to issue at least every five years a report titled *Dietary Guidelines for Americans.* The law instructs that this publication shall contain nutritional and dietary information and guidelines for the general public, shall be based on the preponderance of scientific and medical knowledge current at the time of publication, and shall be promoted by each federal agency in carrying out any federal food, nutrition, or health program. The *Dietary Guidelines for Americans* was issued voluntarily by HHS and USDA in 1980, 1985, and 1990; the 1995 edition was the first statutorily mandated report, followed by subsequent editions at the appropriate intervals. To assist with satisfying the mandate, a discretionary federal advisory committee is established every five years to provide independent, science-based advice and recommendations. The DGAC consists of a panel of experts who were selected from the public/private sector. Individuals who were selected to serve on the Committee have current scientific knowledge in the field of human nutrition and chronic disease.

Appointed Committee Members: The Secretaries of HHS and USDA appointed 15 individuals to serve as members of the 2015 DGAC in May 2013. The Committee currently has 14 members; it became necessary for one of the appointed members to resign from his position on the 2015 DGAC. Information on the DGAC membership is available at *www.DietaryGuidelines.gov.*

Authority: The 2015 DGAC is authorized under 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended.

Committee's Task: The work of the DGAC is solely advisory in nature and time-limited. The Committee is tasked with developing recommendations based on the preponderance of current scientific and medical knowledge using a systematic review approach. The DGAC will examine the current *Dietary Guidelines for Americans,* take into consideration new scientific evidence and current resource documents, and develop a report that is to be given to the Secretaries of HHS and USDA. The report will outline science-based recommendations and rationales which will serve as the basis for developing the eighth edition of the *Dietary Guidelines for Americans.* It is planned for the Committee to hold approximately five public meetings to review and discuss recommendations. This will be the second meeting of the 2015 DGAC. Additional meeting dates, times, locations, and other relevant information will be announced at least 15 days in advance of each meeting via **Federal Register** notice. As stipulated in the charter, the Committee will be terminated after delivery of its final report to the Secretaries of HHS and USDA or two years from the date the charter was filed, whichever comes first.

Purpose of the Meeting: In accordance with FACA and to promote transparency of the process, deliberations of the Committee will occur in a public forum. At this meeting, the Committee will continue its deliberations.

Meeting Agenda: The meeting agenda will include (a) topic-specific presentations from guest experts identified by the Committee, (b) opportunity for the public to give oral testimony on day 2, (c) review of Committee work since the last public meeting, and (d) plans for future Committee work.

Meeting Registration: The meeting is open to the public. The meeting will be accessible by webcast or by attendance in-person. Registration is required for both web viewing and in-person attendance and is expected to open on December 4, 2013. To register, please go to *www.DietaryGuidelines.gov* and click on the link for ''Meeting Registration.'' To register by phone or to request a sign language interpreter or other special accommodations, please call National Capitol Contracting, Laura Walters at (703) 243–9696 by 5:00 p.m. E.S.T., January 6, 2014. Registration must include name, affiliation, phone number or email, days attending, and if participating via webcast or in-person.

Webcast Public Participation: After registering, individuals participating by webcast will receive webcast access information via email.

In-Person Public Participation and Building Access: For in-person participants, the meetings will be held in the National Institutes of Health (NIH) Porter Building (Building 35) as noted above in the Addresses section. Details regarding registration capacity and directions will be posted on *www.DietaryGuidelines.gov.* For in-person participants, check-in at the registration desk on-site at the meeting is required and will begin at 7:15 a.m. each day.

Oral Testimony: For the meeting originally scheduled for October 3–4, 2013, the Committee invited requests from the public to present three minutes of oral testimony. Individuals who were confirmed to speak or who were on standby will retain their designation and order for this rescheduled meeting. Further instructions for participation on January 14, 2014 (day 2) will be sent to those individuals.

Written Public Comments: Written comments from the public will continue to be accepted throughout the Committee's deliberative process. Written public comments can be submitted and/or viewed at *www.DietaryGuidelines.gov* using the ''Submit Comments'' and ''Read Comments'' links, respectively. Written comments received by December 31, 2013 will ensure transmission to the Committee prior to this meeting. As the Committee continues its work, it may request public comments on specific topics; these requests and any instructions for submitting requested comments will be posted on the Web site.

Meeting Documents: Documents pertaining to Committee deliberations, including meeting agendas, summaries, and transcripts will be available on *www.DietaryGuidelines.gov* under ''Meetings,'' and meeting materials will be available for public viewing at the meeting. Meeting information, thereafter, will continue to be accessible online, at the NIH Library, and upon request at the Office of Disease Prevention and Health Promotion, OASH/HHS; 1101 Wootton Parkway, Suite LL100 Tower Building; Rockville, MD 20852: Telephone (240) 453–8280; Fax: (240) 453–8281.

Dated: December 3, 2013.

Don Wright,

Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services.

Dated: December 3, 2013.

Jackie Haven,

Acting Executive Director, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture.

Dated: December 3, 2013.

Chavonda Jacobs-Young,

Acting Administrator, Agricultural Research Service, U.S. Department of Agriculture.

[FR Doc. 2013–29291 Filed 12–6–13; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board, December 09, 2013, 04:00 p.m. to December 10, 2013, 05:00 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on November 25, 2013, 78 FR 70312.

The meeting notice is amended to change the time of the Subcommittee meeting on Planning & Budget on December 9, 2013 from 7:45 p.m. to 9:15 p.m. The Subcommittee meeting was originally scheduled to be held from 4:00 p.m. to 5:30 p.m. The Subcommittee meeting is open to the public. This notice is being published less than 15 days prior to the meeting due to scheduling constraints.

Dated: December 3, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–29286 Filed 12–6–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Allergy and Infectious Diseases Special Emphasis Panel, December 18, 2013, 10:00 a.m. to December 18, 2013, 06:00 p.m., National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 which was published in the **Federal Register** on November 29, 2013, 78 FR 71628.

The meeting notice is amended to change the date of the meeting from December 18, 2013 to December 17, 2013. The meeting is closed to the public.

Dated: December 4, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–29285 Filed 12–6–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA Center for Genetics Studies (7789).

Date: January 7, 2014.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 435–1439, *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 3, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–29288 Filed 12–6–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Special Emphasis Panel; Multi-Site Clinical Trial to Improve Developmental Outcomes of Preterm Infants.

Date: January 9, 2014.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, Suite 703, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tamizchelvi Thyagarajan, Ph.D. Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, Bethesda, MD 20892, 301–402–5807, *chelvi.thyagarajan@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 3, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–29289 Filed 12–6–13; 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; RFA MH14–200: Integration and Analysis of Diverse HIV-Associated Data (R03).

Date: December 16, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Jose H Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@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; Fellowships: Infectious Diseases and Microbiology.

Date: December 19, 2013.

Time: 4:00 p.m. to 6:00 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: Alexander D Politis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@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

(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: December 3, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–29287 Filed 12–6–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session of the meeting with be webcast for any interested persons, please go to *http://videocast.nih.gov/* for further details and information.

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 Advisory Eye Council.

Date: January 23, 2014.

Open: 8:30 a.m. to 2:00 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by, the staff of the Institute and discussions concerning Institute programs.

Place: National Institutes of Health, Rockledge II Building, Room 9100/9104, 6705 Rockledge Drive, Bethesda, MD 20817.

Closed: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II Building, Room 9100/9104, 6705 Rockledge Drive, Bethesda, MD 20817.

Contact Person: Lore Anne McNicol, Ph.D., Director, Division of Extramural Research, National Eye Institute, National Institutes Of Health, Bethesda, MD 20892, (301) 451–2020, *loreanne.mcnicol@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nei.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: December 4, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–29322 Filed 12–6–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2013–0079]

Privacy Act of 1974; Department of Homeland Security Transportation Security Administration—DHS/TSA–001 Transportation Security Enforcement Record System System of Records

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice of Privacy Act System of Records Update.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/Transportation Security Administration—DHS/TSA–001 Transportation Security Enforcement Record System System of Records.'' This system of records allows the Department of Homeland Security/Transportation Security Administration to collect and maintain records related to the Transportation Security Administration's screening of passengers and property, as well as records related to the investigation or enforcement of transportation security laws, regulations, directives, or Federal, State, local, or international law. For example, records relating to an investigation of a security incident that occurred during passenger or property screening would be covered by this system. As a result of a biennial review of this system, records have been updated within the routine uses. Specifically, the statute citation in routine use P. has been corrected. This notice is being re-issued in its entirety in order to have a single updated record available for public review. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before January 8, 2014. This updated system will be effective January 8, 2014.

ADDRESSES: You may submit comments, identified by docket number DHS–2013–0079 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Peter Pietra, Privacy Officer, Privacy Policy and Compliance, TSA–36, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6036; email: *TSAPrivacy@dhs.gov.* For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) Transportation Security Information (TSA) proposes to update and reissue a current DHS system of records titled, ''DHS/TSA–001 Transportation Security Enforcement Record System (TSERS) System of Records.''

As a result of a biennial review of this system, records have been updated within the routine uses. The statute citation in routine use P. has been corrected to 49 U.S.C. § 46301(h).

TSA's mission is to protect the nation's transportation systems to ensure freedom of movement for people and commerce. To achieve this mission, TSA is required to develop and adapt its security programs to respond to evolving threats to transportation security.

Consistent with DHS' information-sharing mission, information stored in the DHS/TSA–001 TSERS may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

Portions of this system are exempt under 5 U.S.C. §§ 552a(k)(1) and (k)(2). Portions of the system pertaining to investigations or prosecutions of violations of criminal law are exempt under 5 U.S.C. § 552a(j)(2). These exemptions are reflected in the final rule published on August 4, 2006 in 71 FR 44223.

This updated system will be included in DHS' inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/TSA–001 TSERS System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

(TSA)—001

SYSTEM OF RECORDS:

Department of Homeland Security (DHS)/Transportation Security Administration

SYSTEM NAME:

DHS/TSA–001 Transportation Security Enforcement Record System (TSERS)

SECURITY CLASSIFICATION:

Classified, sensitive.

SYSTEM LOCATION:

Records are maintained at TSA Headquarters offices in Arlington, Virginia, and at various TSA field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Owners, operators, and employees in all modes of transportation for which DHS/TSA has security-related duties; witnesses and other third parties who provide information; individuals undergoing screening of their person (including identity verification) or property; individuals against whom investigative, administrative, or civil or criminal enforcement action has been initiated for violation of certain TSA regulations or security directives,

relevant provisions of 49 U.S.C. Chapter 449, or other laws; individuals being investigated or prosecuted for violations of law; and individuals who communicate security incidents, potential security incidents, or otherwise suspicious activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to the screening of property and the security screening and identity verification of individuals, including identification media and identifying information such as:

- Individual's name;
- Address;
- Date of birth;
- Gender;
- Contact information (e.g., email addresses, phone numbers);
- Social Security Number,
- Fingerprints or other biometric identifiers;
- Photographs or video; and
- Travel information or boarding passes.

Additionally, information related to the investigation or prosecution of any alleged violation; place of violation; Enforcement Investigative Reports (EIRs); security incident reports, screening reports, suspicious-activity reports, and other incident or investigative reports; statements of alleged violators, witnesses, and other third parties who provide information; proposed penalty; investigators' analyses and work papers; enforcement actions taken; findings; documentation of physical evidence; correspondence of TSA employees and others in enforcement cases; pleadings and other court filings; legal opinions and attorney work papers; and information obtained from various law enforcement or prosecuting authorities relating to the enforcement of laws or regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 114(d), 44901, 44903, 44916, 46101, 46301.

PURPOSE(S):

The records are created in order to maintain an enforcement and inspections system for all modes of transportation for which TSA has security related duties and to maintain records related to the investigation or prosecution of violations or potential violations of Federal, State, local, or international criminal law. They may be used, generally, to identify, review, analyze, investigate, and prosecute violations or potential violations of transportation security laws, regulations and directives or other laws as well as to identify and address potential threats to transportation security. They may also be used to record the details of TSA security-related activity, such as passenger or property screening.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. § 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. § 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including U.S. Attorney Offices, or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. §§ 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;
2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and
3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS' efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, territorial, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To the United States Department of Transportation, its operating administrations, or the appropriate State or local agency, when relevant or necessary to:

1. Ensure safety and security in any mode of transportation;
2. Enforce safety- and security-related regulations and requirements;
3. Assess and distribute intelligence or law enforcement information related to transportation security;
4. Assess and respond to threats to transportation;
5. Oversee the implementation and ensure the adequacy of security measures at airports and other transportation facilities;
6. Plan and coordinate any actions or activities that may affect transportation safety and security or the operations of transportation operators; or
7. Issue, maintain, or renew a license, certificate, contract, grant, or other benefit.

I. To the appropriate Federal, State, local, tribal, territorial, foreign, or international agency, regarding individuals who pose, or are suspected of posing, a risk to transportation or national security.

J. To a Federal, State, local, tribal, territorial, foreign, or international agency, where such agency has requested information relevant or necessary for the hiring or retention of an individual, or the issuance of a

security clearance, license, contract, grant, or other benefit.

K. To a Federal, State, local, tribal, territorial, foreign, or international agency, if necessary to obtain information relevant to a DHS/TSA decision concerning the hiring or retention of an employee, the issuance of a security clearance, license, contract, grant, or other benefit.

L. To international and foreign governmental authorities in accordance with law and formal or informal international agreement.

M. To third parties during the course of an investigation into any matter before DHS/TSA to the extent necessary to obtain information pertinent to the investigation.

N. To airport operators, aircraft operators, and maritime and surface transportation operators, indirect air carriers, and other facility operators about individuals who are their employees, job applicants, or contractors, or persons to whom they issue identification credentials or grant clearances to secured areas in transportation facilities when relevant to such employment, application, contract, or the issuance of such credentials or clearances.

O. To any agency or instrumentality charged under applicable law with the protection of the public health or safety under circumstances where the public health or safety is at risk.

P. With respect to members of the armed forces who may have violated transportation security or safety requirements and laws, disclose the individual's identifying information and details of their travel on the date of the incident in question to the appropriate branch of the armed forces to the extent necessary to determine whether the individual was performing official duties at the time of the incident. Members of the armed forces include active duty and reserve members, and members of the National Guard. This routine use is intended to permit TSA to determine whether the potential violation must be referred to the appropriate branch of the armed forces for action pursuant to 49 U.S.C. § 46301(h).

Q. To the DOJ, U.S. Attorney's Office, or other Federal agencies for further collection action on any delinquent debt when circumstances warrant.

R. To a debt collection agency for the purpose of debt collection.

S. To airport operators, aircraft operators, air carriers, maritime, and surface transportation operators, indirect air carriers, or other facility operators when appropriate to address a threat or potential threat to transportation security or national security, or when required for administrative purposes related to the effective and efficient administration of transportation security laws.

T. To a former employee of DHS, in accordance with applicable regulations, for purposes of responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

U. To a court, magistrate, or administrative tribunal where a Federal agency is a party to the litigation or administrative proceeding in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings.

V. To the public, on the TSA Web site at www.tsa.gov, final agency and Administrative Law Judge decisions in criminal enforcement and other administrative matters, except that personal information about individuals will be deleted if release of that information would constitute an unwarranted invasion of privacy, including but not limited to medical information.

W. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, where there exists a legitimate public interest in the disclosure of the information, or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy or a risk to transportation or national security.

X. To the appropriate Federal, State, local, tribal, territorial, foreign, or international agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, license, or treaty, where DHS/TSA determines that the information would assist in the enforcement of a civil or criminal law.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies collecting on behalf of the United States Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper. The records may be stored on magnetic disc, tape, digital media, microfiche, and roll microfilm.

RETRIEVABILITY:

Records may be retrieved by name, address, Social Security number, administrative action or legal enforcement numbers, or other assigned identifier of the individual on whom the records are maintained.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules and policies. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who also have a need-to-know for the performance of their official duties; using locks, alarm devices, and passwords; and encrypting data communications. Strict control measures are enforced to ensure that access to classified and/or sensitive information in these records is also based on need to know. Electronic access is limited by computer security measures that are strictly enforced. TSA file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

RETENTION AND DISPOSAL:

National Archives and Records Administration approval is pending for the records in this system. Paper records and information stored on electronic storage media are maintained within TSA for five years and then forwarded to Federal Records Center. Records are destroyed after ten years.

SYSTEM MANAGER AND ADDRESS:

Information Systems Program Manager, Office of the Chief Counsel, TSA Headquarters, West Tower, 8th Floor, TSA–2, 601 S. 12th Street, Arlington, VA 20598.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the

notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, DHS/TSA will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the TSA FOIA Officer by email at *foia.tsa@dhs.gov* or by mail at Transportation Security Administration, TSA–20, FOIA Office, 601 S. 12th Street, Arlington, VA 20598. If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from the alleged violator, TSA employees or contractors, witnesses to the alleged violation or events surrounding the alleged violation, other third parties who provided information regarding the alleged violation, State and local agencies, and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system are exempt under 5 U.S.C. 552a(k)(1) and (k)(2). Portions of the system pertaining to investigations or prosecutions of violations of criminal law are exempt under 5 U.S.C. 552a(j)(2). These exemptions are reflected in the final rule published on August 4, 2006 in 71 FR 44223.

Dated: November 21, 2013.

Karen L. Neuman

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2013–29353 Filed 12–6–13; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2013–0049; OMB No. 1660–0102]

Agency Information Collection Activities: Proposed Collection; Comment Request; Federal Emergency Management Agency Housing Inspection Services Customer Satisfaction Survey

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the housing inspection services customer satisfaction survey.

DATES: Comments must be submitted on or before February 7, 2014.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2013–0049. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., 8NE, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dawson Riggleman, Contracting Officer's Representative, FEMA Contract Management and Housing Inspection Services, 540–686–3810. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: Executive Order 12862, *Setting Customer Service Standards,* signed on 9/11/1993 requires all executive departments and agencies that provide significant services directly to the public to provide those services in a manner that seeks to meet the customer service standard established by E.O. 12862 and to take the following actions: (1) Identify the customers who are, or should be served by the agency; (2) survey customers to determine the kind and quality of services requested and their level of satisfaction with existing services; (3) post service standards and measure results against standards; (4) benchmark customer service performance against the best in business; (5) survey front-line employees on barriers and ideas for, matching the best in business; (6) provide customers with choices in both the sources of service and the means of delivery; (7) make information, services, and complaint systems easily accessible; and (8) provide means to address customer complaints. In compliance with the FEMA Housing Inspection Services, contract inspectors meet with

disaster assistance applicants in Federally declared disasters areas to assess dwelling damage. This survey will collect responses to questions about different aspects of the housing inspection process such as the time commitment for the inspection, how the respondent felt about the inspection procedure, and the overall level of satisfaction with the inspection process.

Collection of Information

Title: Federal Emergency Management Agency Housing Inspection Services Customer Satisfaction Survey.

Type of Information Collection: Revision of a currently approved information collection.

FEMA Forms: 007–0–1 and FEMA Form 007–0–1S.

Abstract: Federal Emergency Management Agency Housing Inspection Services Customer Satisfaction Survey, FEMA Form 007–0–1 and 007–0–1S are used to survey individuals who have contacted FEMA for disaster assistance. FEMA Inspection Services Managers and Task Monitors use the survey results to measure disaster inspector customer service and make improvements to disaster services that increase customer satisfaction and inspection program effectiveness. The information is shared with Regional staff specific to the Federal declaration for which the survey is conducted to further assist in enhancing customer service to those affected by disasters and other incidents that result in a declaration.

Affected Public: Individuals and Households.

Number of Respondents: 9,441.

Number of Responses: 9,441.

Estimated Total Annual Burden Hours: 2,360.

Estimated Cost: There are no recordkeeping, capital, start-up or maintenance costs associated with this information collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: November 25, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–29256 Filed 12–6–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2013–0051; OMB No. 1660–0127]

Agency Information Collection Activities: Proposed Collection; Comment Request; Logistics Capability Assistance Tool (LCAT)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Logistics Capability Assistance Tool (LCAT).

DATES: Comments must be submitted on or before February 7, 2014.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2013–0051. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Megan Repass, Program Analyst, Logistics Management Directorate, Logistics Plans & Exercises Division, 202–646–2522 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Logistics Capability Assistance Tool (LCAT) is tailored for use by state, local, and tribal entities to evaluate their current disaster logistics readiness, identify areas for targeted improvement, and develop a roadmap to both mitigate weaknesses and further enhance strengths. The LCAT is authorized by Public Law 109–295, *Department of Homeland Security Appropriations Act, 2007,* and Title VI of the Post-Katrina Emergency Reform Act of 2006, Sections 636 and 637 (6 U.S.C. 636 and 637).

Collection of Information

Title: Logistics Capability Assistance Tool (LCAT).

OMB Number: 1660–0127.

Type of Information Collection: Revision of a currently approved information collection.

FEMA Forms: FEMA Form 008–0–1, State Content Guide (formerly LCAT Booklet); FEMA Form 008–0–2, Local Content Guide; FEMA Form 008–0–3, Tribal Content Guide.

Abstract: The Logistics Capability Assistance Tool (LCAT) is a voluntary maturity model for state, local, and tribal entities to self-assess their disaster logistics planning and response capabilities and identify areas of relative strength and weakness. The LCAT is facilitated through two-day collaborative sessions and is hosted by the requesting emergency management agency's office. FEMA provides the emergency management agencies with a detailed analysis report and roadmap for continuous improvement if the state, local, or tribal entity decides to share the outcome.

Affected Public: State, local, or Tribal Government.

Number of Respondents: 41.

Number of Responses: 41.

Estimated Total Annual Burden Hours: 363 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form No.	Number of respondents	Number of responses per respondent	Total number of responses	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate	Total annual respondent cost
State, Local or Tribal Government.	LCAT Briefing/No Form.	11	1	11	0.33 hour (20 minutes).	3.3	$43.57	$158.16
State, Local or Tribal Government.	State Content Guide and Instructions/FEMA Form 008–0–1.	10	1	10	12 hours	120	43.57	5,228.40
State, Local or Tribal Government.	Local Content Guide/FEMA Form 008–0–2.	10	1	10	12 hours	120	43.57	5,228.40
State, Local or Tribal Government.	Tribal Content Guide/FEMA Form 008–0–3.	10	1	10	12 hours	120	43.57	5,228.40
Total		41		41		363		15,843.36

• **Note:** The "Avg. Hourly Wage Rate" for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $15,843.36. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $252,340.00.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: November 26, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–29251 Filed 12–6–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2013–0032; OMB No. 1660–NW81]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) submits the following information collection request abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before January 8, 2014.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or email address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Preparedness Message Framing Research.

Type of information collection: New.

Form Titles and Numbers: FEMA Form 008–0–17, Focus Group Moderator's Gude; FEMA Form 008–0–18, Recruit/Screener Phone Script; and FEMA Form 008–0–19, Post Event Participant Survey.

Abstract: FEMA's Individual and Community Preparedness Division will engage in qualitative research involving the review of disaster preparedness message frames for the purpose of determining the most effective means for presenting understandable disaster preparedness messages for members of the public and their families. Multiple frames will be used to probe: (1) Overall understanding of the terms used in preparedness messaging (Disaster; Preparedness; Emergency); (2) General concern and attitudes (area specific hazards and risks; concern or worry about specific hazards and risks; plans for taking steps); (3) Reactions to hazard specific message concepts; and (4) Effective channels for communication. This research will provide insights on how to improve existing disaster preparedness messages to encourage the public to engage in preparedness behaviors.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 3,840.

Estimated Total Annual Burden Hours: 940 hours.

Estimated Cost: There are no recordkeeping, capital, start-up or maintenance costs assocated with this information collection.

Dated: November 25, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–29254 Filed 12–6–13; 8:45 am]

BILLING CODE 9111–27–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2013–0015; OMB No. 1660–0017]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before January 8, 2014.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or email address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Public Assistance Program.

Type of information collection: Revision of a currently approved information collection.

Form Titles and Numbers: FEMA Form 009–0–49 Request for Public Assistance; FEMA Form 009–0–91 Project Worksheet (PW); FEMA Form 009–0–91A Project Worksheet (PW)—Damage Description and Scope of Work Continuation Sheet; FEMA Form 009–0–91B Project Worksheet (PW)—Cost Estimate Continuation Sheet; FEMA Form 009–0–91C Project Worksheet (PW)—Maps and Sketches Sheet; FEMA Form 009–0–91D Project Worksheet (PW)—Photo Sheet; FEMA Form 009–0–120 Special Considerations Questions; FEMA Form 009–0–121 PNP Facility Questionnaire; FEMA Form 009–0–123 Force Account Labor Summary Record; FEMA Form 009–0–124 Materials Summary Record; FEMA Form 009–0–125 Rented Equipment Summary Record; FEMA Form 009–0–126 Contract Work Summary Record; FEMA Form 009–0–127 Force Account Equipment Summary Record; FEMA Form 009–0–128 Applicant's Benefits Calculation Worksheet; FEMA Form 009–0–111, Quarterly Progress Reports; FEMA Form 055–0–0–1, Request for Arbitration.

Abstract: The information collected is utilized by FEMA to make determinations for Public Assistance grants based on the information supplied by the respondents.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 56.

Number of Responses: 346,960.

Estimated Total Annual Burden Hours: 361,826 hours.

Estimated Cost: There are no record keeping, capital, start-up maintenance costs associated with this information collection.

Dated: November 25, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–29255 Filed 12–6–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0014]

Agency Information Collection Activities: Affidavit of Support, Form I–134; Extension, Without Change, 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 July 23, 2013, at 78 FR 44141, allowing for a 60-day public comment period. USCIS received one public comment submission in connection with the 60-day notice.

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 8, 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, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov*. The comments submitted to the OMB USCIS Desk Officer may also be submitted to DHS via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0072 or via email at *uscisfrcomment@uscis.dhs.gov*. All submissions received must include the agency name and the OMB Control Number 1615–0014.

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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Affidavit of Support.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–134; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information collection is necessary to determine if at the time of application into the United States, the applicant is likely to become a public charge.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 18,460 responses at 90 minutes (1.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 27,690.

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: December 3, 2013.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2013–29339 Filed 12–6–13; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Canadian Border Boat Landing Permit (CBP Form I–68)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0108.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Canadian Border Boat Landing Permit (Form I–68). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507).

DATES: Written comments should be received on or before February 7, 2014, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Canadian Border Boat Landing Permit.

OMB Number: 1651–0108.

Form Number: CBP Form I–68.

Abstract: The Canadian Border Boat Landing Permit (CBP Form I–68) allows participants entering the United States along the northern border by small pleasure boats weighing less than 5 tons to telephonically report their arrival without having to appear in person for an inspection by a CBP officer. United States citizens, Lawful Permanent Residents of the United States, Canadian citizens, Landed Commonwealth Residents of Canada, and Landed Residents of Canada who are nationals of the Visa Waiver Program countries listed in 8 CFR 217.2(a) are eligible to participate.

The information collected on CBP Form I–68 allows people who enter the United States from Canada by small pleasure boats to be inspected only once during the boating season, rather than each time they make an entry. This information collection is provided for by 8 CFR 235.1(e) and Section 235 of Immigration and Nationality Act. CBP Form I–68 is accessible at *http://forms.cbp.gov/pdf/CBP_Form_I68.pdf.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to CBP Form I–68.

Type of Review: Extension (without change).

Affected Public: Individuals or households.

Estimated Number of Respondents: 68,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 11,288.

Estimated Annual Cost: $1,088,000.

Dated: December 4, 2013.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2013–29283 Filed 12–6–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Passenger and Crew Manifest

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0088.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Passenger and Crew Manifest (Advance Passenger Information System-APIS). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (78 FR 55279) on September 10, 2013, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 8, 2014 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13; 44 U.S.C. 3507). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Passenger and Crew Manifest (Advance Passenger Information System—APIS).

OMB Number: 1651–0088.

Form Number: None.

Abstract: The Advance Passenger Information System (APIS) is an automated method in which U.S. Customs and Border Protection (CBP) receives information about passengers and crew onboard inbound and outbound international flights before their arrival in or departure from the United States. APIS data includes biographical information for international air passengers arriving in or departing from the United States, allowing the data to be checked against CBP databases.

The information is submitted for both commercial and private aircraft flights. Specific data elements required for each passenger and crew member include: Full name; date of birth; gender; citizenship; document type; passport number; country of issuance and expiration date; and alien registration number where applicable.

APIS is authorized under the Aviation and Transportation Security Act, Public Law 107–71. Under this statute, the transmission of passenger and crew manifest information is required even for flights where the passengers and crew have already been pre-screened or pre-cleared at the foreign location for admission to the United States. APIS is required under 19 CFR 122.49a, 122.49b, 122.49c, 122.75a, 122.75b, and 122.22.

Respondents submit their electronic manifest either through a direct interface with CBP, or using eAPIS which is a web-based system that can be accessed at *https://eapis.cbp.dhs.gov/*.

Current Actions: This submission is being made to request an extension with no change to the burden hours or to the information collected.

Type of Review: Extension with no change.

Affected Public: Businesses, Individuals.

Commercial Airlines:

Estimated Number of Respondents: 1,130.

Estimated Number of Total Annual Responses: 1,850,878.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 307,245.

Estimated Costs: $68,361,719.

Commercial Airline Passengers (3rd party):

Estimated Number of Respondents: 184,050,663.

Estimated Number of Total Annual Responses: 184,050,663.

Estimated Time per Response: 10 seconds.

Estimated Total Annual Burden Hours: 496,937.

Private Aircraft Pilots:

Estimated Number of Respondents: 460,000.

Estimated Number of Total Annual Responses: 460,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 115,000.

Dated: December 4, 2013.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2013–29282 Filed 12–6–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N277; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before January 8, 2014. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by January 8, 2014.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Pamela Tupdale, Winder, GA; PRT–19139B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for golden parakeet (*Guarouba guarouba*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Aysel Akturk, Wayne, NJ; PRT–19014B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for golden parakeet (*Guarouba guarouba*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Larry Gaugler, Elmhurst, NY; PRT–168307

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Jacksonville Zoological Society, Jacksonville, FL; PRT–676034

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families and species, to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Family:
Cercopithecidae
Hylobatidae
Lemuridae
Macropodidae
Sturnidae (*does not* include *Aplonis pelzelni*)
Boidae (*does not* include Mona or Puerto Rico boas)

Species:
Koala (*Phascolarctos cinereus*)

Applicant: Florida Tortoise and Iguana Breeders, S.W. Ranches, FL; PRT–19831B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the Galapagos tortoise (*Chelonoidis nigra*), radiated tortoise

(*Astrochelys radiata*), Cuban ground iguana (*Cyclura nubila nubila*), Grand Cayman blue iguana (*Cyclura lewisi*), and Cayman Brac ground iguana (*Cyclura nubila caymanensis*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: William Zovickian, Dacula, GA; PRT–721023

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the family Testudinidae, to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Charles Franz, Copperas Cove, TX; PRT–20028B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Charles Franz, Copperas Cove, TX; PRT–20032B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities over a 5-year period.

Applicant: Heaven on Earth Avian Acre, Loxahatchee Groves, FL; PRT–94164A

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to include blue-throated macaw (*Ara glaucogularis*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Detroit Zoological Society, Royal Oak, MI; PRT–672017

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Family:

Bovidae
Canidae
Cercopithecidae
Cervidae
Equidae
Felidae (does not include jaguar, margay or ocelot)
Hominidae
Hylobatidae
Lemuridae
Macropodidae
Rhinocerotidae
Tapiridae
Ursidae
Anatidae (does not include Hawaiian goose or Hawaiian duck)
Cathartidae
Gruidae
Sturnidae (does not include *Aplonis pelzelni*)
Boidae (does not include Mona boa or Puerto Rico boa)
Crocodylidae (does not include American crocodile)
Pelomedusidae
Testudinidae

Applicant: Milwaukee County Zoo, Milwaukee, WI; PRT–683685

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families and species, to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Family:

Cebidae
Cercopithecidae
Felidae (does not include jaguar, margay or ocelot)
Hominidae
Hylobatidae
Lemuridae
Macropodidae
Rhinocerotidae
Tapiridae
Fringillidae
Sturnidae (does not include *Aplonis pelzelni Threskiornithidae, Iguanidae,* and *Pelomedusidae*)

Species:

Koala (*Phascolarctos cinereus*)

Applicant: Chris Hedrick, Houston, TX; PRT–809377

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Tuan Pham, Hicksville, NY; PRT–20213B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) and spotted pond turtle (*Geoclemys hamiltonii*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Steven Cheng, San Jose, CA; PRT–20549B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Jonathan Rosenstrach, White Plains, NY; PRT–20889B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Wildwood Wildlife Park, Minocqua, WI; PRT–66306A

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to include the following species, to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Species:

Black and white ruffed lemur (*Varecia variegata*)
Red ruffed lemur (*Varecia rubra*)
Mandrill (*Mandrillus sphinx*)
Japanese macaque (*Macaca fuscata*)
Lar gibbon (*Hylobates lar*)
Snow leopard (*Uncia uncia*)
Bontebok (*Damaliscus pygargus pygargus)*
Addax (*Addax nasomaculatus*)
Red lechwe (*Kobus leche*)
Scimitar-horned oryx (*Oryx dammah*)
Dama gazelle (*Nanger dama*)
Blyth's tragopan (*Tragopan blythii*)
Cabot's tragopan (*Tragopan caboti*)
Spotted pond turtle (*Geoclemys hamiltonii*)

Applicant: Sean Meyer, Palm Coast, FL; PRT–20053B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise

(*Astrochelys radiata*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Gulf Breeze Zoo, Gulf Breeze, FL; PRT–690136

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families and species, to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Family:

Bovidae
Cebidae
Canidae
Cercopithecidae
Equidae
Felidae (does not include jaguar, margay or ocelot)
Hominidae
Hylobatidae
Lemuridae
Columbidae
Gruidae
Psittacidae (does not include thick-billed parrot).

Species:

Barasingha (*Rucervus duvaucelii*)
Galapagos tortoise (*Chelonoidis nigra*)
Radiated tortoise (*Astrochelys radiate*)

Applicant: Craig Stanford, South Pasadena, CA; PRT–170346

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata*), to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Allen Rogers, Sargent, TX; PRT–21564B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for scimitar-horned oryx (*Oryx dammah*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Allen Rogers, Sargent, TX; PRT–21559B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities over a 5-year period.

Applicant: Los Angeles Zoo, Los Angeles, CA; PRT–687498

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families and species, to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Family:

Bovidae
Camelidae
Canidae
Cebidae
Cercopithecidae
Cervidae
Equidae
Felidae
Hominidae
Hylobatidae
Lemuridae
Macropodidae
Mustelidae
Rhinocerotidae
Tapiridae
Viverridae
Cathartidae
Boidae
Viperidae
Varanidae
Testudinidae
Crocodylidae

Species:

Koala *(Phascolarctos cinereus)*
Babirusa *(Babyrousa babyrussa)*
Brush-tailed bettong (*Bettongia penicillata*)
Cabot's tragopan (*Tragopan caboti)*
Blyth's tragopan (*Tragopan blythii)*
Harpy eagle *(Harpia harpyja)*
Bali mynah *(Leucopsar rothschildi)*

Applicant: The Living Desert, Palm Desert, CA; PRT–738164

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families and species, to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Family:

Canidae
Equidae
Felidae [includes cheetah (*Acinonyx jubatus*); but does not include the genus *Panthera* or margay (*Leopardus wiedii*), ocelot (*L. pardalis*) or the following subspecies of jaguarundi: *Herpailurus yaguarondi cacomitli* or *H. y. tolteca*]
Iguanidae
Testudinidae
Viperidae (including *Crotalus unicolor* but does not include *Crotalus willardi*)

Species:

Bactrian wapiti (*Cervus elaphus bactrianus*)
Amur leopard (*Panthera pardus orientalis*)

Applicant: Fort Wayne Zoological Society, Fort Wayne, IN; PRT–671564

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families and species, to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Family:

Cebidae
Cercopithecidae
Felidae (does not include jaguar, margay or ocelot)
Hominidae
Lemuridae
Macropodidae
Ciconiidae (does not include wood stork)
Psittacidae (does not include thick-billed parrot)
Spheniscidae
Sturnidae (does not include *Aplonis pelzelni*)
Testudinidae
Varanidae

Species:

African Wild Dog (*Lycaon pictus)*
Cabot's tragopan (*Tragopan caboti*)

Applicant: Atlanta Fulton County Zoo, Atlanta, GA; PRT–740398

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to include the following species, to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Species:

Bali starling (*Leucopsar rothschildi*)
Aruba Island rattlesnake (*Crotalus durissus unicolor*)

Applicant: Wildlife Conservation Society, Bronx, NY; PRT–18975B

The applicant requests a permit to re-export biological samples from previously imported samples of five post mortem wild Amur tigers (*Panthera tigris altaica*) to the United Kingdom for the purpose of enhancement of the survival of the species.

Applicant: Geoffrey Ridder, Utopia, TX; PRT–00030B

The applicant requests a permit to export the sport-hunted trophy/trophies of scimitar-horned oryx (*Oryx dammah*)

culled from a captive herd maintained in the state of Texas, for the purpose of enhancement of the survival of the species.

B. Endangered Marine Mammals and Marine Mammals

Applicant: BBC Television, Bristol, England; PRT–14359B

On November 22, 2013, we published a **Federal Register** notice inviting the public to comment on an application for a permit to photograph polar bears (*Ursus maritimus*) (78 FR 70067). We cited the incorrect PRT number (PRT–05202B); the correct PRT number is above.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2013–29224 Filed 12–6–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX14EE000101800]

Proposal To Withdraw Spatial Data Transfer Standard, Parts 1–7

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of request for comments on proposal to withdraw Spatial Data Transfer Standard, Parts 1–7.

SUMMARY: The Federal Geographic Data Committee (FGDC) proposes to withdraw the Spatial Data Transfer Standard (SDTS), Parts 1–7, *http://www.fgdc.gov/standards/projects/FGDC-standards-projects/SDTS/index_html,* as an FGDC-endorsed standard. FGDC maintenance authority agencies were asked to review the relevance of the SDTS, and they responded that the SDTS is no longer used by their agencies.

The SDTS had provided a common mechanism for transferring digital geospatial data among different systems and for sharing and integrating data from many diverse sources. For more information about the SDTS, refer to the **SUPPLEMENTARY INFORMATION** section.

The FGDC seeks comment from any organization that continues to provide data in the SDTS format and would prefer to retain the SDTS as an FGDC-endorsed standard. Alternatively, it seeks comment from any organization that supports withdrawal of the SDTS Parts 1–7 as an FGDC-endorsed standard. FGDC Standards Directive #9, Maintenance, *http://www.fgdc.gov/standards/process/standards-directives/directive-09,* requires a 90-day public comment period for proposals to withdraw FGDC-endorsed standards.

DATES: Comments on the FGDC proposal to withdraw the Spatial Data Transfer Standard, Parts 1–7, shall be submitted to Ms. Julie Binder Maitra, FGDC Standards Coordinator, *jmaitra@fgdc.gov,* by Friday, February 21, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Binder Maitra, U.S. Geological Survey, Federal Geographic Data Committee, *jmaitra@fgdc.gov,* 703–648–4627.

SUPPLEMENTARY INFORMATION: Part 1, Logical Specifications, consists of three main sections that explain the SDTS conceptual model and SDTS spatial object types, components of a data quality report, and the layout of all SDTS modules. The U.S. Geological Survey (USGS) is the maintenance authority for Part 1.

Part 2, Spatial Features, contains a catalogue of spatial features and associated attributes. It addresses a need for definition of common spatial feature terms to ensure greater compatibility in data transfers. It is limited to small- and medium-scale spatial features commonly used on topographic quadrangle maps and hydrographic charts. The USGS is the maintenance authority for Part 2.

Part 3, ISO 8211 Encoding, explains the use of ISO/IEC 8211:1994, Information technology—Specification for a data descriptive file for information interchange, to create SDTS file sets (i.e., transfers). Geography Markup Language (GML), which the FGDC has endorsed, now satisfies the encoding requirements that SDTS once provided. The USGS is the maintenance authority for Part 3.

Part 4, Topological Vector Profile (TVP), is an SDTS profile that limits options and identifies specific requirements for SDTS transfers of data sets consisting of topologically structured area and linear spatial features. The USGS is the maintenance authority for Part 4.

For more information about Parts 1–4 and links to Parts 1–4, visit *http://mcmcweb.er.usgs.gov/sdts/standard.html.*

Part 5, Raster Profile and Extensions, is a profile for 2-dimensional image and gridded raster data. It permits alternate image file formats using the ISO Basic Image Interchange Format (BIIF) or Georeferenced Tagged Information File Format (GeoTIFF). The USGS is the maintenance authority for Part 5. For more information about and a link to SDTS Part 5, visit *http://www.fgdc.gov/standards/projects/FGDC-standards-projects/SDTS/sdts_pt5/index_html.*

Part 6, Point Profile, is designed to transfer and archive digital geospatial point data that can have very precise locations. High precision National Geodetic Survey (NGS) geodetic network control point data and Bureau of Land Management (BLM) survey point data can use this profile. The NGS is the maintenance authority for Part 6. The NGS no longer supports download of NGS datasheets in SDTS format. The NGS now offers users the ability to download geodetic control datasheets in plain ASCII text and Shapefiles instead. For more information about and a link to SDTS Part 6, visit *http://www.fgdc.gov/standards/projects/FGDC-standards-projects/SDTS/sdts_point/index_html.*

Part 7, Computer Aided Design and Drafting (CADD) Profile, contains specifications for an SDTS profile for use with vector-based geographic data as represented in CADD software. This profile facilitates the translation of data between CADD packages without loss of data and between CADD and mainstream GIS packages. CADD software allows for several types of elements, in particular, three-dimensional elements and complex curves that are not commonly used by GIS. The U.S. Army Corps of Engineers is the maintenance authority for Part 7. It is no longer using the standard. For more information about and a link to SDTS Part 7, visit *http://www.fgdc.gov/standards/projects/FGDC-standards-projects/SDTS/sdts_cadd/index_html.*

Following the 90-day public comment period, the FGDC Standards Coordinator will collate comments into a report. The report and a recommendation based on the report will be forwarded to the FGDC Coordination Group (CG) for approval. The report and CG recommendation will then be forwarded to the FGDC Steering Committee for final decision. Following the FGDC Steering Committee decision, the decision will be announced on the FGDC Web site, *http://www.fgdc.gov,* and the **Federal Register**.

The FGDC coordinates the development of the National Spatial Data Infrastructure (NSDI), which encompasses the policies, standards, and procedures for organizations to cooperatively produce and share geospatial data. Federal agencies that make up the FGDC develop the NSDI in

cooperation with organizations from State, local and tribal governments, the academic community, and the private sector. The authority for the FGDC is OMB Circular No. A–16 Revised on Coordination of Geographic Information and Related Spatial Data Activities (Revised August 19, 2002). More information on the FGDC and the NSDI is available at *http://www.fgdc.gov.*

Ivan DeLoatch,

Executive Director, Federal Geographic Data Committee.

[FR Doc. 2013–28624 Filed 12–6–13; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–14519; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 9, 2013. Pursuant to § 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 24, 2013. 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 21, 2013.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ALABAMA

Elmore County

Ellerslie, 2650 Edgewood Rd., Millbrook, 13000957

Lauderdale County

Florence Mound, 1028 S. Court St., Florence, 13000958

Mobile County

Maysville Historic District, Bounded by Virginia, Ann, Duval & Houston Sts., Mobile, 13000959

COLORADO

Phillips County

Evergreen Corner Rural Historic Landscape, Jct. of Cty. Rds. 30 & 17, Haxtun, 13000960

DISTRICT OF COLUMBIA

District of Columbia

General Baking Company Bakery, 2146 Georgia Ave. NW., Washington, 13000961

FLORIDA

Broward County

Villa Providence, 324 SW. 2nd Ave., Hallandale Beach, 13000962

Escambia County

Mount Zion Missionary Baptist Church, 528 W. Jackson St., Pensacola, 13000963

Polk County

Auburndale City Hall, 1 Bobby Green Plz., Auburndale, 13000964

GEORGIA

DeKalb County

McDonough—Adams—Kings Highway Historic District, Bounded by W. College Ave., Kings Hwy., Oakview Rd. & McDonough St., Decatur, 13000965

Gwinnett County

Suwanee Historic District, Main, Russell & White Sts., Stonecypher & Scales Rds., N & S Railroad, Suwanee, 13000966

MARYLAND

Anne Arundel County

Citizens State Bank, 1402 Odenton Rd., Odenton, 13000967

Dorchester County

Rock M.E. Church, 2403 MD 16, Cambridge, 13000968

MICHIGAN

Kent County

Central Furniture Company—H.E. Shaw Furniture Company Factory, 400 Ionia Ave., SW., Grand Rapids, 13000969

MISSOURI

Boone County

Harrisburg School—Ancient Landmark Masonic Lodge Number 356 A.F. & A.M., 140 S. Harris St., Harrisburg, 13000970

MONTANA

Gallatin County

Montana State University Historic District, Roughly bounded by W. College & W. Grant Sts., S. 11th & S. 6th Aves., Bozeman, 13000972

NEW HAMPSHIRE

Grafton County

Watch Rock Camp, (Squam MPS) 414 US 3, Holderness, 13000973

Rockingham County

Beach Club, The, 2450 Ocean Blvd., Rye, 13000974

NEW JERSEY

Cumberland County

Wood Mansion House, 821 Columbia Ave., Millville City, 13000975

Monmouth County

Bradley Beach Free Public Library, 511 4th Ave., Bradley Beach, 13000976

Morris County

Seward House, 30 Flanders Rd. (Mount Olive Township), Flanders, 13000977

NEW MEXICO

Bernalillo County

AT & SF Freight Office, 314 1st St., Albuquerque, 13000971

NORTH CAROLINA

Watauga County

Flat Top Estate, Blue Ridge Pkwy., milepost 292.8 to 295.5, Blowing Rock, 13000978

OHIO

Butler County

Big Four Depot, 25 Charles St., Middletown, 13000979

Franklin County

Hanford Village George Washington Carver Addition Historic District, 1918–1939, 2012–2030 Kent & 783–879 Lyman Sts., 822–1958 Clay Ct., 851–853 Bowman Ave., Hanford Park, Columbus, 13000980

Montgomery County

Wright Library, 1776 Far Hills Ave., Dayton, 13000981

OREGON

Multnomah County

Rinehart Building, 3037–3041 N. Williams Ave., Portland, 13000982

TENNESSEE

Knox County

Frazier Bend Historic District, (Knoxville and Knox County MPS) N. of Jct. of Thorn Grove Pk. & Kodak Rd., Knoxville, 13000983

VIRGINIA

Bath County

Barton Lodge, 373 French's Hill Dr., Hot Springs, 13000984

Switchback School, (Rosenwald Schools in Virginia MPS) 210 Pinehurst Heights Rd., Hot Springs, 13000985

Three Hills, 348 Three Hills Ln., Warm Springs, 13000986

Wesley, John, Methodist Episcopal Church and Cemetery, 212 W. Warm Springs, Warm Springs, 13000987

Culpeper County

Elmwood Farm and Browning Store (Boundary Increase), Elmwood Farm Dr., Boston, 13000988

Highland County

Jones, C.P., House and Law Office, 144 & 160 W. Main St., Monterey, 13000989

Loudoun County

Huntland, 35955 Huntland Farm Rd., Middleburg, 13000990

Nelson County

Woods, Major James, House, 3042 Rockfish Valley Hwy., Nellysford, 13000991

Page County

White House, The, 1917 Kauffmans Mill Rd., Luray, 13000992

Richmond Independent city

Robinson House, 200 North Blvd., Richmond (Independent City), 13000993

Roanoke Independent city

Roanoke River and Railroad Historic District, Albemarle & Walnut Aves., SE., Williamson Rd., SE., 4th & Jefferson Sts., SE., Roanoke (Independent City), 13000994

WASHINGTON

King County

Barksdale, Julian and Marajane, House, 13226 42nd Ave., Seattle, 13000995

Dose, Charles P. and Ida, House, 2121 31st Ave., S., Seattle, 13000996

Pend Oreille County

Pend Oreille County Courthouse, 625 W. 4th St., Newport, 13000997

Pierce County

Central Elementary School, 401 S. 8th St., Tacoma, 13000998

Spokane County

Garland Theater, (Movie Theaters in Washington State MPS) 924 W. Garland Ave., Spokane, 13000999

Ridpath Hotel, 515 W. Sprague Ave., Spokane, 13001000

A request to move has been made for the following resource:

CALIFORNIA

San Bernardino County

Bono's Restaurant and Deli, 15395 Foothill Blvd., Fontana, 07001353

A request for removal has been made for the following resource:

TEXAS

Taylor County

Chambers, Samuel A., House, 224 Merchant, Abilene, 92000211

[FR Doc. 2013–29225 Filed 12–6–13; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2013–0065] [MMAA104000]

Notice of Determination of No Competitive Interest, Offshore Virginia

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Determination of No Competitive Interest (DNCI) for a Proposed Outer Continental Shelf (OCS) Wind Energy Research Lease Offshore Virginia.

SUMMARY: This notice provides BOEM's determination that there is no competitive interest in the area requested by the Commonwealth of Virginia, Department of Mines Minerals and Energy (DMME) to acquire an OCS research lease as described in the *Public Notice of an Unsolicited Request for an OCS Research Lease; Request for Competitive Interest (RFCI); and Request for Public Comment,* that BOEM published on July 30, 2013, (78 FR 45965–45968). The RFCI described the proposal submitted to BOEM by the DMME to acquire an OCS lease for renewable energy research activities, including wind turbine installation and operational testing and installation of metocean monitoring equipment on the OCS off the coast of Virginia, and provided an opportunity for the public to submit comments about the proposal.

DATES: Effective December 9, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Casey Reeves, Project Coordinator, BOEM, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170. (703) 787–1320.

SUPPLEMENTARY INFORMATION:

Authority

This DNCI is published pursuant to subsection 8(p)(3) of the OCS Lands Act, (43 U.S.C. 1337(p)(3)), which was added by section 388 of the Energy Policy Act of 2005 (EPAct), and the implementing regulations at 30 CFR part 585. Subsection 8(p)(3) of the OCS Lands Act requires that an OCS renewable energy lease, easement, or right-of-way (ROW) be issued ''on a competitive basis unless the Secretary [of the Interior] determines after public notice of a proposed lease, easement, or ROW that there is no competitive interest.'' The Secretary delegated the authority to make such determinations to BOEM.

Determination and Next Steps

This DNCI provides notice to the public that BOEM has determined there is no competitive interest in the proposed research lease area, as no indications of competitive interest were submitted in response to the RFCI.

In the RFCI, BOEM also solicited public comment from interested stakeholders about the proposed lease area and the proposed DMME research project and any potential impacts from the project. In response to the RFCI, BOEM received public comment submissions from five entities. BOEM will use the comments received to inform subsequent decisions. After the publication of this DNCI, BOEM may proceed with the research leasing process using the procedures described in 30 CFR § 585.238.

Map of the Area

A map of the area proposed for a research lease can be found at the following site: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx*

Dated: November 27, 2013.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2013–29242 Filed 12–6–13; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–13–033]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: December 13, 2013 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 701–TA–509 and 731–TA–1244 (Preliminary) (1,1,1,2–Tetrafluroethane from China). The

Commission is currently scheduled to complete and file its determinations and views on or before December 13, 2013; Commissioners' opinions will be issued on December 20, 2013.

5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.
Issued: December 5, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–29417 Filed 12–5–13; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Connected Media Experience, Inc.

Notice is hereby given that, on October 17, 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''), Connected Media Experience, Inc. (''CMX'') 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, Dolby Laboratories, Inc., San Francisco, CA, has withdrawn 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 CMX intends to file additional written notifications disclosing all changes in membership.

On March 12, 2010, CMX 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 16, 2010 (75 FR 20003).

The last notification was filed with the Department on July 24, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 26, 2013 (78 FR 52787).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–29277 Filed 12–6–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Die Products Consortium

Notice is hereby given that, on November 7, 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''), Die Products Consortium (''DPC'') 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, GlobalFoundries, Inc., Santa Clara, CA, 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 DPC intends to file additional written notifications disclosing all changes in membership.

On November 15, 1999, DPC 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 June 26, 2000 (65 FR 39429).

The last notification was filed with the Department on May 15, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 5, 2013 (78 FR 33859).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–29274 Filed 12–6–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Members of SGIP 2.0, Inc.

Notice is hereby given that, on October 11, 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''), Members of SGIP 2.0, Inc. (''MSGIP 2.0'') 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, Lafayette Utilities System, Lafayette, LA; Machine-to-Machine Intelligence Corporation (M2Mi), Moffett Field, CA; Inman Technology, Cambridge, MA; Kkrish Energy LLC, Colorado Springs, CO; Smarthome Laboratories, Ltd., Boulder, CO; and Gridtest Systems Inc., Westlake Village, CA, have been added as parties to this venture. Also, Alcatraz Energy, Boulder, CO, has withdrawn 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 MSGIP 2.0 intends to file additional written notifications disclosing all changes in membership.

On February 5, 2013, MSGIP 2.0 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 March 7, 2013 (78 FR 14836).

The last notification was filed with the Department on July 22, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 26, 2013 (78 FR 52786).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–29275 Filed 12–6–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sematech, INC. D/B/A International Sematech

Notice is hereby given that, on November 12, 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''), Sematech, Inc. d/b/a International Sematech (''SEMATECH'') 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, Entegris, Inc., Bellerica, MA; Integrated Device Technology, Inc., San Jose, CA; Bruker Nano GmbH, Santa Barbara, CA; Rion, Kukubunji, JAPAN, Adeka Corporation, Hamburg, GERMANY; SUSS Microtec Photomask Equipment GmbH & Co. kg., Garching, GERMANY; University College of London, London, ENGLAND, and Nova Measuring Instruments, Ltd., Rehovot, ISRAEL, have been added as parties to this venture.

Also, AZ Microelectronics, Somerville, NJ, has withdrawn 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 SEMATECH intends to file additional written notifications disclosing all changes in membership.

On April 22, 1988, SEMATECH 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 May 19, 1988 (53 FR 17987).

The last notification was filed with the Department on August 20, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 24, 2013 (78 FR 58558).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–29273 Filed 12–6–13; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Task-Force Networked Media

Notice is hereby given that, on November 5, 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''), Joint Task-Force Networked Media (''JT–NM'') 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 invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ADVA Optical Networking SE, Munich, Germany; Axion, Gilze, The Netherlands; Comunicare Digitale Forum, Lucca, Italy; EMC² Isilon, Victoria, Australia; Eugene Keane (individual member), Santa Barbara, CA, Focusrite Novation Inc., El Segundo, CA; Harman International, Stamford, CT; Janet West (individual member), Reading, United Kingdom, Nicole Gabriel (individual member), Parsippany, NJ; PacketStorm, Laguna Hills, CA; Simon Eldridge (individual member), Los Angeles, CA; Triskel Inc., Wilmington, DE; and WHRO–TV, Norfolk, VA, have been added 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 JT–NM intends to file additional written notifications disclosing all changes in membership.

On July 10, 2013, JT–NM 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 August 15, 2013 (78 FR 49768).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–29276 Filed 12–6–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; National Armaments Consortium (Formerly National Warheads and Energetics Consortium)

Notice is hereby given that, on November 14, 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''), National Warheads and Energetics Consortium (''NWEC''), 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. National Warheads and Energetics Consortium (''NWEC'') has changed its name to National Armaments Consortium (''NAC''). In addition, ARES, Inc., Port Clinton, OH; Arrow Tech Associates, Inc., So. Burlington, VT; B.M.L. Tool & Mfg. Corp., Monroe, CT; BlazeTech Corporation, Woburn, MA; Booz Allen Hamilton, McLean, VA; Central Screw Products dba Detroit Gun Works, Troy, MI; Cherokee-Technical Specialists, LLC, Santa Rosa Beach, FL; Defined PRO Machining LLC, Wharton, NJ; Gramago, LLC, Norman, OK; Helicon Chemical Company LLC, Orlando, FL; Lewis Machine & Tool Company, Milan, IL; Lund & Company Invention LLC, River Forest, IL; MATSYS, Inc., Sterling, VA; MELITAconsulting LLC, Alexandria, VA; Merrill Technologies Group, Saginaw, MI; Metal Storm Inc., Herndon, VA; Mide Technology Corporation, Medford, MA; Moog, Inc., East Aurora, NY; Otis Products Inc., Lyons Falls, NY; Parsons Government Services, Pasadena, CA; Performance Indictor, LLC, Lowell, MA; Physical Optics Corporation, Torrance, CA; and The Curators of the University of Missouri, Columbia, MO, have been added as parties to this venture.

Also, Blackhawk Management, Houston, TX; Blue Juice, Inc., San Rafael, CA; Engineering and Management Executives, Alexandria, VA; LRAD Corporation, San Diego, CA; Lumimove, Inc., (dba Crosslink), St. Louis, MO; and MBDA Inc., Arlington, VA, 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 NAC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NAC 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 June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on July 22, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 26, 2013 (78 FR 52787).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–29272 Filed 12–6–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Prohibited Transaction Class Exemption 1985–68 to Permit Employee Benefit Plans To Invest in Customer Notes of Employers

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Prohibited Transaction Class Exemption 1985–68 to Permit Employee Benefit Plans to Invest in Customer Notes of Employers,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq.

DATES: Submit comments on or before January 8, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201310-1210-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Information Policy and Assessment Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to maintain PRA authority for information collection activities related to Prohibited Transaction Class Exemption (PTE) 1985–68, which permits an employee benefit plan to invest in an employer's customer notes under circumstances the Employee Retirement Income Security Act of 1974 and Internal Revenue Code of 1986 would otherwise prohibit. More specifically, this PTE describes the conditions under which a plan may acquire customer notes accepted by an employer of employees covered by the plan in the ordinary course of the employer's business activity and, thus, be exempt from the prohibited transaction restrictions; provided, the exemption conditions are met. The PTE covers sales as well as contributions of customer notes by an employer to its plan. The customer notes must have been accepted by the employer in its primary business activity as the seller of tangible personal property that is being financed by the notes, so that the exemption does not apply to notes of an employer's affiliate.

The PTE includes a recordkeeping provision that requires a plan seeking to use the exemption to maintain records that enable an interested party to determine whether the exemption conditions have been met. These records must be maintained for six (6) years from the date of the transaction. The PTE also requires those records be made available to certain persons on request. Without this recordkeeping requirement, the DOL would be hampered in enforcing the exemption terms and ensure user compliance.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0094.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on December 31, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 22, 2013 (78 FR 30333).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0094. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Prohibited Transaction Class Exemption 1985–68

to Permit Employee Benefit Plans to Invest in Customer Notes of Employers.

OMB Control Number: 1210–0094.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 69.

Total Estimated Number of Responses: 325.

Total Estimated Annual Burden Hours: 1.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 29, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–29307 Filed 12–6–13; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,718; TA–W–82,718A]

Schweitzer-Mauduit International, Inc., Paper Machine #21, Ancram, New York; Schweitzer-Mauduit International, Inc., Columbia Mill, Lee, Massachusetts; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 30, 2013, applicable to workers of Schweitzer-Mauduit International, Inc., Paper Machine #21, Ancram, New York. The workers are engaged in activities related to the production of porous plug warp and long fiber papers for the cigarette industry. The Department's notice of determination was published in the **Federal Register** on June 21, 2013 (78 FR 37588).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information from the company revealed that workers of Schweitzer-Mauduit International, Inc., Columbia Mill, Lee, Massachusetts are employed at a warehouse that stores the porous plug warp and long fiber papers for the cigarette industry produced at Schweitzer-Mauduit International, Inc., Paper Machine #21, Ancram, New York (TA–W–82,718). Although the workers are included on the payroll for Schweitzer-Mauduit International, Inc., Paper Machine #21, Ancram, New York (TA–W–82,718), they work and live in Massachusetts.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports.

Based on these findings, the Department is amending this certification to include workers working at Schweitzer-Mauduit International, Inc., Columbia Mill, Lee, Massachusetts (TA–W–82,718A).

The amended notice applicable to TA–W–82,718 is hereby issued as follows:

All workers of Schweitzer-Mauduit International, Inc., Paper Machine #21, Ancram, New York (TA–W–82,718) and of Schweitzer-Mauduit International, Inc., Columbia Mill, Lee, Massachusetts (TA–W–82,718A), who became totally or partially separated from employment on or after May 1, 2012 through May 30, 2015, and all workers in the group threatened with total or partial separation from employment on May 30, 2013 through May 30, 2015, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 19th day of November 2013.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–29245 Filed 12–6–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,364]

Atmel Corporation, Colorado Springs, Colorado; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on June 4, 2013, applicable to workers of Atmel Corporation, Colorado Springs, Colorado. The Department's notice of determination was published in the **Federal Register** on July 2, 2013 (Volume 78 FR Pages 39776–39779).

At the request of one-stop operator/partner, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of semiconductor wafers.

The one-stop operator/partner reports that all of the workers at Atmel Corporation, Colorado Springs, Colorado were engaged in activities related to production of semiconductor wafers and that the certification should not be limited to the Colorado Springs Foundry Operations Group, Colorado Springs Test Group and the Equipment Engineering Services Group.

The amended notice applicable to TA–W–82,364 is hereby issued as follows:

All workers of Atmel Corporation, Colorado Springs, Colorado who became totally or partially separated from employment on or after January 22, 2012 through June 4, 2015, and all workers in the group threatened with total or partial separation from employment on June 4, 2013 through June 4, 2015, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 19th day of November, 2013.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–29248 Filed 12–6–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of November 11, 2013 through November 15, 2013.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one

or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
83,014	American Customer Care, Employment Solutions	Elmira, NY	August 12, 2012.
83,121	Parkersburg Bedding Company, LLC, American Signature, Inc	Parkersburg, WV	September 26, 2012.
83,140	Dresser-Rand Group, Superior Technical Resources, Inc	Painted Post, NY	October 3, 2012.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
83,049	SG Americas Securities, LLC, Listed Products Back-Office Operations Department.	Jersey City, NJ	August 30, 2012.
83,053	Pitney Bowes, Inc., Customer Support Services Department	Neenah, WI	August 29, 2012.
83,059	Biolitec, Inc., Biolitec AG	East Longmeadow, MA	September 4, 2012.
83,120	CEMEX Materials, LLC, Business Services Organization (BSO), CEMEX, Inc.	West Palm Beach, FL	September 20, 2012.
83,203	Ciber, Inc., Corporate Accounting and Finance Administration	Greenwood Village, CO	November 6, 2012.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
83,118	Aleris Specification Alloys, Inc	Saginaw, MI	September 25, 2012.
83,191	Victor Innovative Textiles, LLC, Victor Innovatex, Victor Forstmann, Inc. Division, Able Associates, 2000.	Fall River, MA	October 30, 2012.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
83,031	Flextronics F/K/A Alcatel-Lucent, Aerotek Staffing, American Cyber Systems, Finezi, etc.	Longview, TX.	
83,038	Spartech Polycom, Inc., PolyOne Designed Structures & Solutions, Workforce Employment Solutions.	Cape Girardeau, MO.	
83,040	Home Dimension, Inc., North American Division	Woodstock, GA.	

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
82,968	Zila, Inc., Tolmar, Inc., Staffmark	Batesville, AR.	
83,026	Acxiom Corporation, Global Marketing Organization (GMO)	Little Rock, AR.	
83,070	Harrison Medical Center, Franciscan Health System	Bremerton, WA.	
83,081	Suzlon Rotor Corporation, Suzlon Energy Limited	Pipestone, MN.	
83,096	Newark Recycled Paperboard Solutions, Newark Paperboard Products, Manpower.	Greenville, PA.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W number	Subject firm	Location	Impact date
83,130	Harte Hanks Shoppers Inc	Brea, CA.	
83,155	Veolia Water Facility, Jackson Resource Recovery Facility	Jackson, MI.	
83,214	Timken Company (The), Altavista Bearing Plant	Altavista, VA.	

I hereby certify that the aforementioned determinations were issued during the period of November 11, 2013 through November 15, 2013. These determinations are available on the Department's Web site *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 21st day of November 2013.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–29247 Filed 12–6–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 19, 2013.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 19, 2013.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 21st day of November 2013.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[9 TAA petitions instituted between 11/11/13 and 11/15/13]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
83212	HSBC Card Services, Inc. (State/One-Stop)	Tulsa, OK	11/12/13	11/08/13
83213	Norandal USA, Inc. (Union)	Salisbury, NC	11/12/13	11/08/13
83214	Timken Company (The) (Workers)	Altavista, VA	11/12/13	11/08/13
83215	Dow Jones and Company, Customer Service Group (State/One-Stop).	Chicopee, MA	11/12/13	11/08/13
83216	NTT Data, Inc. (State/One-Stop)	North Syracuse, NY	11/13/13	11/12/13
83217	Airtex Products (State/One-Stop)	Fairfiled, IL	11/13/13	11/12/13
83218	Boeing Company (The) (Workers)	Annapolis Junction, MD	11/13/13	11/13/13
83219	Covidien (Company)	San Jose, CA	11/14/13	11/08/13
83220	Rock Tenn Milwaukee (Workers)	Milwaukee, WI	11/14/13	10/09/13

[FR Doc. 2013–29246 Filed 12–6–13; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Sunshine Act Meeting

STATUS: Open.

TIME AND DATE: 10:00 a.m., Thursday, December 12, 2013.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

MATTERS TO BE CONSIDERED:

1. Board Briefing, Supplemental Interagency Rule, Appraisals for Higher-Priced Mortgage Loans.
2. 2014 Temporary Corporate Credit Union Stabilization Fund Oversight Budget.
3. NCUA's Rules and Regulations, Technical Amendments, Corporate Credit Union Rating System.
4. NCUA's Rules and Regulations, Requirements for Federal Credit Union Examination Sites.
5. NCUA's Rules and Regulations, Charitable Donation Accounts.

RECESS: 11:00 a.m.

STATUS: Closed.

TIME AND DATE: 11:15 a.m., Thursday, December 12, 2013.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

MATTERS TO BE CONSIDERED:

1. Consideration of Supervisory Activities. Closed pursuant to Exemptions (8), (9)(i)(B) and (9)(ii).
2. Appeal under Part 701.14(e) and Part 747, Subpart J of the NCUA's Rules and Regulations. Closed pursuant to Exemptions (6) and (8).
3. Personnel. Closed pursuant to Exemption (2).

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2013–29421 Filed 12–5–13; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Submission for OMB Review; Comment Request

The National Endowment for the Arts, on behalf of the Federal Council on the Arts and the Humanities, has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained at *reginfo.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–4718), within thirty days of this publication in the **Federal Register**.

The OMB 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.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of its application guidelines. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Agency: National Endowment for the Arts.

Title: Application for Indemnification.

OMB Number: 3135–0094.

Frequency: renewed every three years.

Affected Public: Non-profit, tax exempt organizations, and governmental units.

Number of Respondents: 50 per year.

Estimated Time per Respondent: 45 hours.

Estimate Cost per Respondent: $1,800.

Total Burden Hours: 2,233.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $90,000.

Description: This application form is used by non-profit, tax-exempt organizations (primarily museums), and governmental units to apply to the Federal Council on the Arts and the Humanities (through the National Endowment for the Arts) for indemnification of eligible works of art and artifacts, borrowed from abroad for exhibition in the United States, from within the United States when the foreign works of art are integral to the exhibition, or sent from the United States for exhibition abroad. The indemnity agreement is backed by the full faith and credit of the United States. In the event of loss or damage to an indemnified object, the Federal Council certifies the validity of the claim and requests payment from Congress. 20 U.S.C. 973 et seq. requires such an application and specifies information which must be supplied. This statutory requirement is implemented by regulation at 45 CFR 1160.4.

Dated: December 4, 2013.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2013–29284 Filed 12–6–13; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Amendment to System of Records

AGENCY: Institute of Museum and Library Services (IMLS), National Foundation on the Arts and Humanities.

ACTION: Notice of Amendment to System of Records.

SUMMARY: The Institute of Museum and Library Services (IMLS), is publishing an amendment of its systems of records with descriptions of the systems and the ways they are maintained, as required by the Privacy Act of 1974, 5 U.S.C. 552(a)(e)(4).

DATES: The amended system notice is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Email: *nweiss@imls.gov.* Telephone: (202) 653–4787. Stephanie Burwell, Chief Information Officer, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Email: *sburwell@imls.gov.* Telephone: (202) 653–4767.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 552a(e)(4), IMLS today is publishing an amended notice of the existence and character of its systems of records in order to make available in one place in the **Federal Register** the most up-to-date information regarding these systems.

Statement of General Routine Uses

The following general routine uses are incorporated by reference into each system of records set forth herein, unless specifically limited in the system description.

1. A record may be disclosed as a routine use to a Member of Congress or his or her staff, when the Member of Congress or his or her staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. A record may be disclosed as a routine use to designated officers and employees of other agencies and departments of the Federal government having an interest in the subject individual for employment purposes (including the hiring or retention of any employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefits by the requesting agency) to the extent that the information is relevant and necessary to the requesting agency's decision on the matter involved.

3. In the event that a record in a system of records maintained by IMLS indicates, either by itself or in combination with other information in IMLS' possession, a violation or potential violation of the law (whether civil, criminal, or regulatory in nature, and whether arising by statute or by regulation, rule, or order issued pursuant thereto), that record may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto. Such referral shall be deemed to authorize: (1) Any and all appropriate and necessary uses of such records in a court of law or before an administrative board or hearing; and (2) Such other interagency referrals as may be

necessary to carry out the receiving agencies' assigned law enforcement duties.

4. The names, Social Security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed as a routine use to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, as follows:

(a) For use in the Federal Parent Locator System (FPLS) and the Federal Tax Offset System for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193);

(b) For release to the Social Security Administration for the purpose of verifying Social Security numbers in connection with the operation of FPLS; and

(c) For release to the U.S. Department of the Treasury (Treasury) for the purpose of payroll, savings bonds, and other deductions; administering the Earned Income Tax Credit Program (section 32, Internal Revenue Code of 1986); and verifying a claim with respect to employment on a tax return, as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193);

5. A record may be disclosed as a routine use in the course of presenting evidence to a court, magistrate, or administrative tribunal of appropriate jurisdiction, and such disclosure may include disclosures to opposing counsel in the course of settlement negotiations.

6. Information from any system of records may be used as a data source for management information, for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies. Information also may be disclosed to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

7. A record may be disclosed as a routine use to a contractor, expert, or consultant of IMLS (or an office within IMLS) when the purpose of the release is to perform a survey, audit, or other review of IMLS' procedures and operations.

8. A record from any system of records may be disclosed as a routine use to the National Archives and Records Administration as part of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

9. A record may be disclosed to a contractor, grantee, or other recipient of Federal funds when the record to be released reflects serious inadequacies with the recipient's personnel, and disclosure of the record is for the purpose of permitting the recipient to effect corrective action in the government's best interest.

10. A record may be disclosed to a contractor, grantee, or other recipient of Federal funds when the recipient has incurred indebtedness to the government through its receipt of government funds, and the release of the record is for the purpose of allowing the debtor to effect a collection against a third party.

11. Information in a system of records may be disclosed as a routine use to the Treasury; other Federal agencies; ''consumer reporting agencies'' (as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3)); or private collection contractors for the purpose of collecting a debt owed to the Federal Government as provided in the regulations promulgated by IMLS at 45 CFR 1183.

Table of Contents

This document gives notice that the following IMLS systems of records are in effect:

IMLS–1 IMLS Reviewers—Application and Award Management (AAMS)
IMLS–2 IMLS Reviewers—Paper Files
IMLS–3 Personnel/Payroll System
IMLS–4 Financial Management System

IMLS–1

SYSTEM NAME:

IMLS Reviewers—Application and Award Management System (AAMS)—Automated Systems.

SYSTEM LOCATION:

Office of the Chief Information Officer, Institute for Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals whom IMLS may ask or has asked to serve as application reviewers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, telefax number, email address, date of birth, identification numbers assigned by IMLS, panel assignments, and other data concerning potential and actual reviewers, including area of expertise.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Museum and Library Services Act of 2010 (20 U.S.C. 9101 et seq.)

PURPOSE(S):

To provide a central repository for information about experts who could be or have been called upon to review applications, and to enable staff to retrieve and manage reviewer information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be used for the identification of reviewers, as well as general administration of the grant review process. See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THIS SYSTEM:

STORAGE:

Records in this system are maintained electronically in Microsoft Sequential databases and related automated systems.

RETRIEVABILITY:

Records in this system are retrieved by name, area of expertise, panel assignment, state and other data elements.

SAFEGUARDS:

This system is maintained in a locked computer room that can be accessed only by authorized employees of IMLS. Access to records in this system is further controlled by password, with different levels of modification rights assigned to individuals and offices at IMLS based upon their specific job functions.

RETENTION AND DISPOSAL:

Records in this system are maintained and updated on a continuing basis, as new information is received. IMLS staff periodically will request updated information from individuals who are included as reviewers in the AAMS. Records will be removed only with the concurrence of the appropriate discipline directors.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Directors of the Office of Museum Services and Library Services, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036.

NOTIFICATION PROCEDURE:

See 45 CFR part 1182.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1182.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1182.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from IMLS employees involved in the administration of grants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

IMLS–2

SYSTEM NAME:

IMLS Reviewers—Paper Files.

SYSTEM LOCATION:

Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals whom IMLS may ask or has asked to serve as application reviewers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system also contains information about potential and actual reviewers, including materials such as resumes, reviewer profile forms, and contracts concerning participation on panels.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Museum and Library Services Act of 2010 (20 U.S.C. 9101 et seq.)

PURPOSE(S):

To complement the AAMS (IMLS–1) with information well suited for maintenance in hard copy form.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be used for the general administration of the grant review and award process, as well as identification of reviewers and their activities in this capacity. See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in file cabinets.

RETRIEVABILITY:

Records in this system are retrieved by name.

SAFEGUARDS:

File cabinets containing the records in this system are kept locked.

RETENTION AND DISPOSAL:

Discipline offices maintain paper files that grow as individuals, or discipline directors who are processing individuals for service as reviewers, submit resumes. Resumes and profile forms are removed from these files only when they are replaced by more recent information or when the information has been entered into the electronic system. These files may include panelist contracts, copies of which are forwarded to IMLS' Office of the Chief Financial Officer.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Directors of the Offices of Museum Services and Library Services, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036.

NOTIFICATION PROCEDURE:

See 45 CFR part 1182.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1182.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1182.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from IMLS employees involved in the administration of grants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

IMLS–3

SYSTEM NAME:

Payroll/Personnel System.

SYSTEM LOCATION:

Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036, U.S. Department of Interior, Interior Business Center, Denver, Colorado.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of IMLS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll and personnel information, such as time and attendance data, statements of earnings and leave, training data, wage and tax statements, and payroll and personnel transactions. This system includes data that also is maintained in IMLS' official personnel folders, which are managed in accordance with Office of Personnel Management (OPM) regulations. The OPM has given notice of its system of records covering official personnel folders in OPM/GOVT–1.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Museum and Library Services Act of 2010 (20 U.S.C. 9101 et seq.); Federal Personnel Manual and Treasury Fiscal Requirements Manual.

PURPOSE(S):

To document IMLS' personnel processes and to calculate and process payroll.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be transmitted to the U.S. Department of Interior, Interior Business Center, U.S. Department of Treasury, and employee-designated financial institutions to affect issuance of paychecks to employees and distributions of pay according to employee directions for authorized purposes. Data in this system also may be used to prepare payroll, meet government recordkeeping and reporting requirements, and retrieve and apply payroll and personnel information as required for agency needs. See also the list of General and Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records in this system are maintained off-site by the Department of Interior, Interior Business Center (IBC). Paper records generated through the NBC are maintained in file cabinets by the Offices of the Chief Financial Officer and Human Resources after arriving at IMLS. Discipline offices also may use file cabinets to maintain paper records concerning performance reviews and other personnel actions in their divisions.

RETRIEVABILITY:

Records in this system are retrieved by name, Social Security number, or date of birth.

SAFEGUARDS:

Access to the electronic records in this system is controlled by password on the limited number of IMLS computers that can be used to draw information from the IBC. File cabinets containing the paper records in this system either are kept locked during non-business hours, or are located in rooms that are kept locked during non-business hours.

RETENTION AND DISPOSAL:

The Human Resources Officer maintains paper records in this system in accordance with the General Services Administration's General Records Schedule 2. Division offices may maintain paper records concerning performance reviews and other personnel actions in their divisions for the duration of an individual's employment with IMLS.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Officer, Institute of Museum and Library Services; 1800 M Street NW., 9th Floor, Washington, DC 20036.

NOTIFICATION PROCEDURE:

See 45 CFR part 1182.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1182.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1182.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from IMLS employees involved in the administration of personnel and payroll processes.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

IMLS–4

SYSTEM NAME:

Financial Management System—Delphi.

SYSTEM LOCATION:

Enterprise Services Center, 6500 MacArthur Boulevard, Oklahoma City, OK 73169.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of IMLS, application reviewers, grantees, vendors and other Federal Government organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, telefax number, email address, payment information, including banking information. This system data is maintained in an Oracle Database.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Museum and Library Services Act of 2010 (20 U.S.C. 9101 et seq.)

PURPOSE(S):

To provide a central repository of all financial transactions to enable IMLS to meet its statutory reporting requirements to the Office of Management and Budget, the U.S. Department of Treasury, and Congress.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be used for the general administration of the grant management process and the IMLS accounting process. See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THIS SYSTEM:

STORAGE:

Electronic records in this system are maintained off-site by the Department of Transportation's Enterprise Services Center. Associated paper records are also maintained at the Enterprise Services Center. Discipline offices also may use locking file cabinets to maintain paper records concerning financial transactions processed in their divisions.

RETRIEVABILITY:

Records in this system are retrieved by name and/or purchase order number.

SAFEGUARDS:

Authorized IMLS staff use passwords via a remote secure VPN to gain access to the database. Rooms containing the records in this system are kept locked during non-working hours.

RETENTION AND DISPOSAL:

Records in this database are maintained and updated on a daily basis as financial transactions are processed. Discipline offices maintain paper files that grow as financial transactions are submitted to the Enterprise Services Center for processing. Records are disposed of in accordance with the General Services Administration's General Records Schedule.

SYSTEM OWNER(S) AND ADDRESS:

Office of the Chief Financial Officer; 1800 M Street NW., 9th Floor, Washington, DC 20036.

NOTIFICATION PROCEDURE:

See 45 CFR part 1182.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1182.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1182.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from IMLS employees involved in the administration of grants, travel, and vendor processes.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Signed: November 27, 2013.

Nancy E. Weiss,

General Counsel.

[FR Doc. 2013–29270 Filed 12–6–13; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Request Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 8, 2014. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (ACA 2014–006) to Eric Stangeland of Quark Expeditions on September 18, 2013 . The issued permit allows the applicant to conduct waste management activities associated with tourism activities including shore

excursions, kayaking, camping, cross country skiing, ice climbing and mountaineering, and downhill skiing in the Antarctic Peninsula region. Mitigation measures are in place to reduce the risk of non-native species introductions and the risk of spills.

Now the applicant proposes a modification to his permit to allow for the conduct of waste management activities associated with conducting ice swimming and remote controlled camera copter activities.

Ice swimming activities would be sanctioned by the International Ice swimming Association. The ice swimming activity would consist of up to seven passengers completing a one mile swim between the tour ship and land (Detaille Island, Stonington Island, or Horseshoe Island). Quark staff would maintain a watch for leopard seals and killer whales and abort the swim if these animals are sighted. Swimmers would be accompanied by Quark staff in kayaks and zodiacs in case of emergency. Mitigation measures would be in place to reduce the risk of non-native species introductions and the risk of spills ashore.

The applicants wish to fly a small, battery operated, remotely controlled copter equipped with a camera to take scenic photos of the Antarctic. The copter would not be flown over concentrations of birds or mammals or over Antarctic Specially Protected Areas. Several measures would be taken to prevent against loss of the copter including painting the copter a highly visible color, only flying it when the wind is calm, flying the copter for short periods of time that last less than half a battery charge, equipping the copter with floatation so that it could be recovered from the sea, allowing only trained operators to fly the copter and ensuring that the separation between the operator and copter does not exceed its ''operational range'' of 500 meters. The copter itself has safety features programmed into such as returning to its take off location if connection is lost with the remote control device. The applicants are seeking a modification to their waste Permit to cover any accidental releases that may result from flying the copter.

Location: Antarctic Peninsula Region.

Dates: (That the mod would be valid) January 7, 2014–March 31, 2017.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–29211 Filed 12–6–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 5200026; NRC–2008–0252]

Vogtle Unit 4 Combined License

AGENCY: Nuclear Regulatory Commission.

ACTION: Determination of inspections, tests, analyses, and acceptance criteria (ITAAC).

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has determined that the inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met for ITAAC E.3.8.05.01.01, for the Vogtle Unit 4 Combined License.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: David Jaffe, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1439, email: *David.Jaffe@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Licensee Notification of Completion of ITAAC

On October 1, 2013, Southern Nuclear Operating Company Inc., (the licensee) submitted an ITAAC closure notification (ICN) under § 52.99(c)(1) of Title 10 of the *Code of Federal Regulations* (10 CFR) informing the NRC that the licensee has successfully performed the required inspections, tests, and analyses for ITAAC E.3.8.05.01.01, and that the specified acceptance criteria are met for Vogtle Unit 4 Combined License (ADAMS Accession No. ML13275A108). This ITAAC was approved as part of the issuance of the combined license, NPF–92, for this facility.

NRC Staff Determination of Completion of ITAAC

The NRC staff has determined that the inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met for Vogtle Unit 4 Combined License, ITAAC E.3.8.05.01.01. This notice fulfills the staff's obligations under 10 CFR 52.99(e)(1) to publish a notice in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests and analyses.

The documentation of the NRC staff's determination is in the ITAAC Closure Verification Evaluation Form (VEF), dated November 12, 2013 (ADAMS Accession Number ML13319A141). The VEF is a form that represents the NRC staff's structured process for reviewing ICNs. The ICN presents a narrative description of how the ITAAC was completed, and the NRC's ICN review process involves a determination on whether, among other things, (1) the ICN provides sufficient information, including a summary of the methodology used to perform the ITAAC, to demonstrate that the inspections, tests, and analyses have been successfully completed; (2) the ICN provides sufficient information to demonstrate that the acceptance criteria are met; and (3) any inspections for the ITAAC have been completed and any ITAAC findings associated with the ITAAC have been closed.

The NRC staff's determination of the successful completion of this ITAAC is based on information available at this time and is subject to the licensee's ability to maintain the condition that the acceptance criteria are met. If new information disputes the NRC staff's determination, this ITAAC will be reopened as necessary. The NRC staff's determination will be used to support a subsequent finding, pursuant to 10 CFR

52.103(g), at the end of construction that all acceptance criteria in the combined license are met. The ITAAC closure process is not finalized for this ITAAC until the NRC makes an affirmative finding under 10 CFR 52.103(g). Any future updates to the status of this ITAAC will be reflected on the NRC's Web site at *http://www.nrc.gov/reactors/new-reactors/oversight/itaac.html.*

Dated at Rockville, Maryland, this 2nd day of December 2013.

For the Nuclear Regulatory Commission.

David Jaffe,

Senior Project Manager, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–29304 Filed 12–6–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0260, License No. SMB–911, Docket No. 40–7580, EA–13–183]

In the Matter of FMRI, Inc., Muskogee, Oklahoma Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Order modifying license.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a license amendment to FMRI authorizing indirect transfer of control, in accordance with its regulations. This Order is being issued, because the licensee informed the NRC that the transfer did not occur.

ADDRESSES: Please refer to Docket ID NRC–2011–0260 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0260. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: J.C. Shepherd, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001; telephone: 301–415–6712; email: *James.Shepherd@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I.

Pursuant to Section 2.106 of Title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is providing notice in the matter of FMRI Order Modifying License

II.

FMRI (or Licensee) is the holder of the NRC License No. SMB–911 (License) issued by the NRC pursuant to 10 CFR Part 40. The License authorizes FMRI to possess natural uranium and thorium and to conduct remediation of the FMRI site, 10 Tantalum Place, Muskogee, Oklahoma. The License was issued on January 27, 1967, expired on September 2, 2002, was most recently amended on October 2, 2012, and remains in effect.

III.

On June 21, 2011, FMRI and its parent company, Fansteel, requested authority for an indirect change of control of FMRI from Fansteel to Green Lantern Acquisitions 1, LLC (GLA–1). On October 2, 2012, the NRC issued Amendment 14 to License No. SMB–911 authorizing the change of control to GLA–1 and modifying certain activity schedules and reporting dates to reflect GLA–1 plans for site remediation activities.

IV.

By email dated March 22, 2013 (ML13231A122), Fansteel and FMRI informed the NRC that: (1) The planned sale agreement with GLA–1 did not occur, (2) other changes related to the transfer will not occur; and (3) FMRI will pursue the possibility of resuming remediation on its own. Therefore, FMRI's current license does not accurately reflect ownership of and activities at the site.

V.

Accordingly, pursuant to Sections 81 and 161b of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 40, *it is hereby ordered that License No. SMB–911 is modified as follows:*

A. Amendment 14, which changed license conditions 1, 3, 10, 26, 29, 37, 50, 51, and 54, is null and void. This modification shall take effect twenty (20) days from the date of this order.

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

VI.

In accordance with 10 CFR 2.202, FMRI must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register**. In addition, FMRI and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which FMRI relies and the reasons that the Order should not have been issued. If a person other than FMRI requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to

submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site *at http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary of the Commission, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by FMRI or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), FMRI may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions of this Order, as specified in Section III shall be final 20 days from the date this Order is published in the **Federal Register**, without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions of this Order, as specified in Section III, shall be final when the extension expires, if a hearing request has not been received. A request for

hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 27th day of November 2013.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Acting Director, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2013–29299 Filed 12–6–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–608; NRC–2013–0053]

SHINE Medical Technologies, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: License application; docketing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has determined that the second and final part of the application for a construction permit, submitted by SHINE Medical Technologies, Inc. (SHINE) is acceptable for docketing.

ADDRESSES: Please refer to Docket ID NRC–2013–0053 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0053. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Steven Lynch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone: 301–415–1524; email: *Steven.Lynch@nrc.gov.*

SUPPLEMENTARY INFORMATION: By letter dated May 31, 2013 (SMT–2013–023, ADAMS Accession No.), SHINE submitted the second and final part of its two-part application for a construction permit. By letter dated September 25, 2013 (ADAMS Accession No. ML13269A378), SHINE supplemented this submission with a discussion of preliminary plans for coping with emergencies, as required by section 50.34(a)(10) of Title 10 of the *Code of Federal Regulations* (10 CFR), completing its application for a construction permit. An exemption from certain requirements of 10 CFR 2.101(a)(5) granted by the Commission on March 20, 2013 (ADAMS Accession No. ML13072B195), in response to a letter from SHINE dated February 18, 2013 (ADAMS Accession No. ML13051A007), allowed SHINE to submit its construction permit application in two parts. Specifically, the exemption allowed SHINE to submit a portion of its application for a construction permit up to six months prior to the remainder of the application regardless of whether or not an environmental impact statement or a supplement to an environmental impact statement is prepared during the review of its application. If granted, the construction permit would allow SHINE to construct a medical radioisotope production facility in Janesville, Wisconsin.

Part one of SHINE's construction permit application was submitted by letter dated March 26, 2013 (ADAMS Accession No. ML13088A192). In accordance with 10 CFR 2.101(a)(5), this partial application submittal contained the following:

- The description and safety assessment of the site required by 10 CFR 50.34(a)(1)
- The environmental report required by 10 CFR 50.30(f)
- The filing fee information required by 10 CFR 50.30(e) and 10 CFR 170.21
- The general information required by 10 CFR 50.33
- The agreement limiting access to classified information required by 10 CFR 50.37

The NRC staff acknowledged receipt of this partial application for a construction permit under 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' in the **Federal Register** (78 FR 29390) on May 20, 2013. On June 25, 2013, NRC staff determined that part one of SHINE's application for a construction permit was complete and acceptable for docketing (ADAMS Accession No. ML13150A280), assigning the application Docket No. 50–608.

The NRC staff has now completed its acceptance review of part two of SHINE's application for a construction permit and determined that this second and final portion of SHINE's two-part construction permit application, as supplemented, contains the remainder of the preliminary safety analysis report required by 10 CFR 50.34(a) and was submitted in accordance with the requirements of 10 CFR 2.101(a)(5). Therefore, the application is complete and acceptable for docketing. SHINE's construction permit application, in its entirety, has been placed under Docket No. 50–608. Please reference this docket number in all future correspondence concerning the review of the SHINE construction permit application.

The NRC staff is now prepared to begin a detailed technical review of the SHINE construction permit application. In the coming weeks, a review schedule will be published that identifies significant milestones and an expected review completion date. Docketing of the application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the requested construction permit. In support of the review of the SHINE construction permit application, a hearing will be conducted by the Commission or a Board designated by the Chief of the Atomic Safety and Licensing Board Panel in accordance with procedures in 10 CFR Part 2, ''Agency Rules of Practice and Procedure.'' A copy of the construction permit application will be referred to the Advisory Committee on Reactor Safeguards for a review and report consistent with 10 CFR 50.58, ''Hearings and report of the Advisory Committee on Reactor Safeguards.'' A future **Federal Register** notice will announce the opportunity to petition for leave to intervene in the hearing required for the application by 10 CFR 50.58 as well as the time and place of the hearing. Additionally, in accordance with 10 CFR Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the Commission will also prepare an environmental impact statement for the proposed action. If the Commission finds that the SHINE construction

permit application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, and that required notifications to other agencies and bodies have been made, the Commission will issue a construction permit, in the form and containing conditions and limitations that the Commission finds appropriate and necessary.

This notice of docketing of the construction permit application does not begin a review to determine whether the proposed SHINE facility should operate. A separate application for an operating license must be submitted for NRC review and approval and, if docketed, would be the subject of a separate **Federal Register** notice.

Dated at Rockville, Maryland, this 2nd day of December, 2013.

For the Nuclear Regulatory Commission.

Alexander Adams, Jr.,

Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–29303 Filed 12–6–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0227]

Operator Licensing Examination Standards for Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is making available for public comment a draft NUREG, NUREG–1021, Revision 10, ''Operator Licensing Examination Standards for Power Reactors.''

DATES: Submit comments by February 7, 2014. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0227. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN–06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: James Kellum, telephone: 301–415–5305, email: *jim.kellum@nrc.gov;* Richard Pelton, telephone: 301–415–1028, email: *rick.pelton@nrc.gov*. Both of the Office of New Reactors; or Timothy Kolb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1428, email: *timothy.kolb@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0227 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0227.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for the draft NUREG is ML13325A090.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0227 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

Discussion

The draft NUREG provides policy and guidance for the development, administration, and grading of examinations used for licensing operators at nuclear power plants pursuant to the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 55, ''Operator Licenses.'' This draft NUREG also provides guidance for maintaining operators' licenses, and for the NRC to conduct requalification examinations when necessary.

Dated at Rockville, Maryland, this 2nd day of December, 2013.

For the Nuclear Regulatory Commission.

Michael Junge,

Chief, Operator Licensing and Human Performance Branch, Division of Construction Inspection and Operational Programs, Office of New Reactors.

[FR Doc. 2013–29302 Filed 12–6–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70968; File No. SR–NYSEArca–2013–130]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .06 to Rule 6.8 To Extend the Pilot Program That Eliminated the Position Limits for Options on SPDR S&P 500 ETF

December 3, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 20, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .06 to Rule 6.8 to extend the pilot program that eliminated the position limits for options on SPDR S&P 500 ETF (''SPY'') (''SPY Pilot Program''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Commentary .06 to Rule 6.8 to extend the time period of the SPY Pilot Program,[4] which is currently scheduled to expire on December 5, 2013, through February 5, 2015.

This filing does not propose any substantive changes to the SPY Pilot Program. In proposing to extend the SPY Pilot Program, the Exchange reaffirms its consideration of several factors that supported the original proposal of the SPY Pilot Program, including (1) the availability of economically equivalent products and their respective position limits, (2) the liquidity of the option and the underlying security, (3) the market capitalization of the underlying security and the related index, (4) the reporting of large positions and requirements surrounding margin, and (5) the potential for market on close volatility.

In the original proposal to establish the SPY Pilot Program, the Exchange stated that if it were to propose an extension, permanent approval or termination of the program, the Exchange would submit, along with any filing proposing such amendments to the program, a report providing an analysis of the SPY Pilot Program covering the first twelve (12) months during which the SPY Pilot Program was in effect (the ''Pilot Report'').[5] However, because not all self-regulatory organizations (''SROs'') have adopted similar rules eliminating position limits on SPY and market participants that are members of such SROs are required to comply with the more restrictive SPY position limits, no market participants have availed themselves of the SPY Pilot Program. As a result, there is no meaningful data available to compile the Pilot Report at this time and therefore the Exchange is not filing a Pilot Report with this extension request. The Exchange believes it is appropriate to extend the SPY Pilot Program to provide time for other SROs to adopt similar rules eliminating position limits on SPY so that the Exchange can prepare a meaningful Pilot Report if it were to propose any further extension, permanent approval or termination of the program.

[4] *See* Securities Exchange Act Release No. 68001 (October 5, 2012), 77 FR 62303 (October 12, 2012) (SR–NYSEArca–2012–112).

[5] *See* Securities Exchange Act Release No. 68001 (October 5, 2012), 77 FR 62303 (October 12, 2012) (SR–NYSEArca–2012–112).

As with the original proposal to establish the SPY Pilot Program, the Exchange represents that the Pilot Report will be submitted within thirty (30) days of the end of the first twelve (12) month of the extended time period. The Pilot Report will detail the size and different types of strategies employed with respect to positions established as a result of the elimination of position limits in SPY. In addition, the Pilot Report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program. The Pilot Report will compare the impact of the pilot program, if any, on the volumes of SPY options and the volatility in the price of the underlying SPY shares, particularly at expiration. In preparing the report the Exchange will utilize various data elements such as volume and open interest. In addition, the Exchange has represented that it will make available to Commission staff data elements relating to the effectiveness of the pilot.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(5) of the Act [7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extending the SPY Pilot Program promotes just and equitable principles of trade by permitting market participants, including market makers, institutional investors and retail investors, to establish greater positions when pursuing their investment goals and needs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any aspect of competition, whether between the Exchange and its competitors, or among market participants. Instead, the proposed rule change is designed to allow the SPY

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

Pilot Program to continue while other SROs adopt similar provisions and meaningful data can be compiled into a Pilot Report.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] 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 [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[13] 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 immediately upon filing. The Exchange believes that waiver of the 30-day operative delay is appropriate and will benefit market participants because immediate operability will allow the SPY Pilot Program to continue without interruption. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2013–130 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–130. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–130 and should be submitted on or before December 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29259 Filed 12–6–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] 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).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70966; File No. SR–FINRA–2013–036]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Relating to Wash Sale Transactions and FINRA Rule 5210 (Publication of Transactions and Quotations)

December 3, 2013.

I. Introduction

On August 15, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (the ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to add Supplementary Material .02 to FINRA Rule 5210 (Publication of Transactions and Quotations) to emphasize that wash sale transactions are generally non-bona fide transactions and that members have an obligation to have policies and procedures in place to review their trading activity for, and prevent, wash sale transactions. The proposed rule change was published for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

comment in the **Federal Register** on September 4, 2013.[3] The Commission received five comment letters on the proposed rule change.[4] On October 4, 2013, the Commission extended the time period for Commission action to December 3, 2013.[5] On December 2, 2013, FINRA submitted a response to the comment letters[6] and filed Amendment No. 1 to the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change as modified by Amendment No. 1.

II. Description of the Proposal

FINRA initially proposed to add Supplementary Material .02 to FINRA Rule 5210 to address members' obligations with respect to certain securities transactions that involve no change in the beneficial ownership of those securities (referred to by FINRA as ''wash sales''), that are occurring and being disseminated to the public when there is no fraudulent or manipulative motivation for the trading activity at issue.[8] The proposed rule change explains that wash sales are generally non-bona fide transactions for purposes of Rule 5210 and that member firms must have policies and procedures that are reasonably designed to review their trading for wash sale transactions and to prevent such transactions from taking place. The proposed rule excludes from the definition of wash sale, transactions that do not result in a change of beneficial ownership, but that originate from unrelated algorithms or from separate and distinct trading strategies, provided these transactions are not undertaken for manipulative or other fraudulent purposes.[9] The proposed rule also initially provided that algorithms or trading strategies within the most discrete unit of an effective system of internal controls at a member firm are presumed to be related, and provided the following examples of the ''most discrete unit of an effective system of internal controls'' in the text of the rule: An aggregation unit, or individual trading desks within an aggregation unit separated by reasonable information barriers, as applicable.

Even if transactions resulting in no change of beneficial ownership were not undertaken with fraudulent or manipulative intent, FINRA believes these transactions can create a misimpression of the level of legitimate trading interest and activity in the security. In a number of instances, FINRA has found that these types of transactions can account for a material percentage (*e.g.,* over 5%) of the consolidated trading volume in a security on a particular day, which can distort the market information that is publicly available for that security.

FINRA states that the proposed rule change is intended to address wash sales occurring due to orders sent by a single algorithm or the interaction of multiple, related algorithms operated by a single firm. The proposal does not seek to prevent trading activity that results from separate trading strategies operating within a single firm. FINRA explains that, in many situations, what may seem to be wash sale activity occurs as a result of orders that originate from the same firm, but from separate or distinct underlying trading strategies (*e.g.,* separate ''desks,'' aggregation units, or algorithms) that have different—and sometimes competing—investment objectives and that deliberately do not interact with each other before generating orders to the market.

FINRA states that only those firms that engage in a pattern or practice of effecting wash sale transactions that result in a material percentage of the trading volume in a particular security would generally violate Rule 5210. The proposed rule change requires reasonable policies and procedures and would not, therefore, apply to isolated wash sale transactions, provided the firm's policies and procedures were reasonable.[10]

FINRA rules and the federal securities laws explicitly prohibit transactions in securities that do not result in a change of beneficial ownership of the securities when there is a fraudulent or manipulative purpose behind the trading activity.[11] In addition, FINRA Rule 5210 provides that no member may cause to be published or circulated any report of a securities transaction unless the member knows or has reason to believe that the transaction was a bona fide transaction. Supplementary Material .01 states that ''[i]t shall be deemed inconsistent with Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices) and 5210 (Publication of Transactions and Quotations) for a member to publish or circulate or cause to be published or circulated, by any means whatsoever, any report of any securities transaction or of any purchase or sale of any security unless such member knows or has reason to believe that such transaction was a bona fide transaction, purchase or sale.'' FINRA represents that each FINRA member has an existing obligation to know, or have a basis to believe, that transactions in which it participates are bona fide. FINRA states that a member must review its trading activity to determine whether it is engaging in wash sale transactions and make changes to minimize their occurrence.

In response to the comments received,[12] FINRA filed Amendment No. 1 which would amend the proposed rule change in the following ways: (1) By replacing the term ''wash sale'' with ''self-trade;'' (2) by clarifying that self-trades are transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in the beneficial ownership of the security, and are bona fide transactions; (3) by clarifying that the policies and procedures required by Rule 5210 must be reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades

[3] *See* Securities Exchange Act Release No. 70276 (August 28, 2013), 78 FR 54502 (''Notice'').

[4] *See* letter from Anonymous to Elizabeth M. Murphy, Secretary, Commission, dated September 9, 2013 (''Anonymous Letter''); letter from William A. Jacobson, Clinical Professor of Law, and Director, Cornell Securities Law Clinic, and Jimin Lee, Cornell University Law School, to Elizabeth M. Murphy, Secretary, Commission, dated September 25, 2013 (''Cornell Letter''); letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Elizabeth M. Murphy, Secretary, Commission, dated September 25, 2013 (''MFA Letter''); letter from Manisha Kimmel, Executive Director, Financial Industry Forum, to Elizabeth M. Murphy, Secretary, Commission, dated September 25, 2013 (''FIF Letter''); and letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, Commission, dated October 4, 2013 (''SIFMA Letter'').

[5] *See* Securities Exchange Act Release No. 70613 (October 4, 2013), 78 FR 62784 (October 22, 2013).

[6] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Brant K. Brown, FINRA, dated December 2, 2013 (''FINRA Letter'').

[7] 15 U.S.C. 78s(b)(2)(B).

[8] Securities transactions that do not result in a change of beneficial ownership of the securities and that are undertaken for the purpose of creating or inducing a false or misleading appearance of activity in the securities are already prohibited by existing securities laws and FINRA rules. *See* footnote 11, *infra.*

[9] FINRA notes that transactions that originate from unrelated algorithms or from separate or distinct trading strategies, trading desks, or aggregation units that are frequent or numerous may raise a presumption that such transactions were undertaken with the intent that they cross and may, therefore, be intended as manipulative or fraudulent.

[10] FINRA notes that the proposed rule change would not change member firms' existing obligations under NASD Rule 3010 and FINRA Rule 2010 with respect to wash sales.

[11] *See, e.g.,* 15 U.S.C. 78i(a)(1); FINRA Rule 6140(b).

[12] *See supra* note 4.

resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks; (4) by clarifying that transactions resulting from orders that originate from unrelated algorithms or separate and distinct trading strategies within the same firm would generally be considered bona fide self-trades; and (5) by removing the examples from the proposed rule text of the types of algorithms or trading desks FINRA would presume to be related for purposes of Rule 5210.

III. Comment Letters

As noted above, the Commission received five comment letters regarding the proposed rule change [13] and FINRA responded to the comments.[14] One comment letter supported the proposal.[15] Three comment letters suggested modifications to the proposal.[16] One comment letter opposed the proposal.[17]

The commenter who supports the proposed rule change believes the proposed rule will enhance the integrity of the markets by requiring FINRA members to prevent unintended wash sales from being effected, which can otherwise result in misleading volume in a security.[18] Further, the commenter agrees that not all wash sales can be prohibited, so it believes that the exception in the proposed rule for wash sale transactions resulting from unrelated algorithms or from separate and distinct trading strategies is appropriate.[19]

The three commenters who also support the proposed rule change, but recommend modifications, believe that the proposal is too restrictive in certain respects.[20] One such commenter argues that the unintentional interaction of orders from one or more algorithms from a single firm should not be a violation of Rule 5210,[21] and that the proposed rule change may create ''a chilling effect on legitimate trading.'' [22] The commenter believes that there should not be a presumption that algorithms within the most discrete trading units are related as they may only share common oversight staff and the same trading unit, but have different trading strategies.[23] In its letter, FINRA responded by stating that there should continue to be a rebuttable presumption that algorithms within the most discrete unit of a firm's internal controls are related.[24] FINRA agrees that firms should be able to attempt to demonstrate their compliance and rebut such a presumption.[25] By referencing examples such as aggregation units or information barriers, FINRA stated that it did not intend to limit the rule to those examples. To avoid confusion, however, FINRA is proposing to remove the examples.[26]

The commenter also requests clarification from FINRA that algorithms are not considered ''related'' ''because they share common infrastructure, inputs such as market data or certain characteristics of a security, or had common quantitative researchers.'' [27] The commenter recommends that the proposed rule change make clear that unrelated trading algorithms would not incur liability,[28] and that the proposed rule change should be limited to equities executed and reported in the United States and not be applied to transactions that are not publicly reported.[29] Finally, the commenter supports the development by markets of a functionality to prevent the unintentional interaction of orders from one or more algorithms at a single firm, and believes that FINRA members should take reasonable steps to prevent such transactions from being publicly reported.[30] In its letter, FINRA responded by stating, among other things, that it does not believe the rule should be limited to equity securities as the same issues can arise in fixed-income transactions.[31]

Another commenter who supports modifications to the proposal disagrees with the presumption made in the proposed rule that algorithms are related if they are in the same aggregation unit or are not separated by information barriers within a firm.[32] The commenter argues that the proposed rule would require such algorithms to have the capability of knowing the orders submitted by other algorithms within the same aggregation unit (or not separated by information barriers) to thus prevent their orders from crossing, which the commenter believes would require ''a substantial development effort,'' and could negatively affect legitimate trading activity.[33] In addition, the commenter is concerned with the proposed requirement that firms have policies and procedures in place that are reasonably designed to review their trading activity for, and prevent, wash sale transactions. The commenter believes it would be a significant challenge for firms to prevent wash sale transactions from taking place, and notes that current wash sale surveillances are done on a post-trade basis.[34] The commenter argues that the better standard would be to require firms to monitor wash sale activity and implement controls ''where such activity demonstrates a pattern or practice of effecting wash sale transactions that result in a material percentage of the volume in a security.'' [35] Review of such activity would occur on a post-trade basis. The commenter also lists several examples where it believes that the prevention requirement in the proposed rule could negatively affect legitimate trading activity,[36] such as by prohibiting an investment advisor from placing orders for different beneficial owners on both sides of the market.[37] FINRA responded to this last point by noting that it does not intend to modify the rule to remove the word ''prevent'' as there are already exchanges that ''provide functionalities and tools to help firms prevent self-trades.'' [38]

The third commenter also recommends modifications to the proposal. First, the commenter states that the proposed rule change should refer to ''wash sales'' as ''self-trades'' instead, as it believes that the term ''wash sales'' connotes manipulation or fraudulent activity.[39] In response to the comment, FINRA has determined to change the use of the term ''wash sale'' to ''self-trade'' to avoid the implication that the types of trading activity addressed in the supplementary material are limited to trading that is undertaken with manipulative intent. FINRA defines ''self-trade'' for purposes

[13] *See supra* note 4.

[14] *See* FINRA Letter, *supra* note 6.

[15] *See* Cornell Letter, *supra* note 4.

[16] *See* MFA Letter, FIF Letter, and SIFMA Letter, *supra* note 4.

[17] *See* Anonymous Letter, *supra* note 4.

[18] *See* Cornell Letter, *supra* note 4, at 1.

[19] *See id.,* at 2.

[20] *See* MFA Letter; FIF Letter; SIFMA Letter; *supra* note 4.

[21] *See* MFA Letter, *supra* note 4, at 1.

[22] *See id.,* at 2.

[23] *See id.,* at 3.

[24] *See* FINRA Letter, *supra* note 6, at 5.

[25] *See id.*

[26] At the same time, FINRA believes it is unlikely that in such situations firms will be able to rebut the presumption that algorithms are ''related.'' FINRA also clarifies that, notwithstanding a presumption that such algorithms are ''related,'' firms are permitted to attempt to demonstrate that two or more algorithms within the most discrete unit of a firm's internal controls, such as an aggregation unit, are not ''related.'' *See id.*

[27] *See MFA Letter, supra* note 4, at 3.

[28] *See id.*

[29] *See* MFA Letter, *supra* note 4, at 2.

[30] *See* MFA Letter, *supra* note 4, at 3.

[31] *See* FINRA Letter, *supra* note 6, at 7.

[32] *See* FIF Letter, *supra* note 4, at 1.

[33] *See id.,* at 2.

[34] *See id.*

[35] *See id.*

[36] *See id.,* at 2–3.

[37] *See* FIF Letter, *supra* note 4, at 3.

[38] *See* FINRA Letter, *supra* note 6, at 7.

[39] *See* SIFMA Letter, *supra* note 4, at 2.

of the rule as a transaction in a security resulting from the unintentional interaction of orders originating from the same firm that involves no change in the beneficial ownership of the security.[40]

Additionally, the commenter recommends that FINRA amend the proposed rule change to instead require firms to have policies and procedures to monitor and prevent ''self-trades'' that constitute a large amount of trading volume in a security on a trading day.[41] Further, the commenter believes that the proposed rule text should be amended to state that only broker-dealers that engage in a pattern or practice of unintentional ''self-trades'' that result in a material amount of trading volume would be in violation of the proposed rule.[42] The commenter urges that a firm that engages in ''self-trades'' on isolated trading days should not be in violation of the proposed rule if the firm then detects and rectifies the issue and takes preventative measures.[43] FINRA responded to this and other commenters who discussed the material percentage matter by stating that it does not believe the rule text should be limited to those transactions that have a material effect on the market because, in many instances, firms will not be able to know the ultimate effect self-trading has as it occurs. Rather, each individual firm should review its trading activity to assess any self-trading in which the firm has engaged and, where necessary, take appropriate action to prevent a pattern or practice of such activity from occurring going forward.[44] FINRA reiterated its view, however, that isolated self-trades are generally bona fide transactions, and that it is only when that type of trading activity accounts for a material percentage of the volume in a particular security that the self-trading activity results in potential misinformation that can adversely affect the price discovery process.[45] FINRA stated that it is amending the proposed rule to specifically note that firms' obligations are to prevent a pattern or practice of self-trades, and not all self-trades.[46]

Finally, the commenter requests that FINRA remove the broad presumption that all algorithms and strategies within the most discrete unit of an effective system of internal controls are related. According to the commenter, algorithms within a discrete unit may be unrelated, but may still effect unintentional ''self-trades.''[47] The commenter believes that the exclusion for unrelated algorithms should be a non-exclusive safe harbor allowing FINRA members to ''demonstrate their compliance by those means that best reflect their organization, rather than be limited to information barriers alone.''[48] In its letter, FINRA stated that it believes that the presumption that algorithms within the most discrete unit of a firm's internal controls are related is valid, and that firms should be permitted to demonstrate their compliance and rebut this presumption.[49] FINRA proposed to remove from its proposed rule text the examples it provided of such related algorithms and trading strategies—specifically, those ''within an aggregation unit, or individual trading desks within an aggregation unit separated by reasonable information barriers, as applicable'' to avoid limiting the proposed rule to those examples.[50] However, FINRA believes that it is unlikely that a firm will be able to rebut the presumption that algorithms or trading strategies within an aggregation unit or individual trading desks within an aggregation unit separated by information barriers are in fact related.[51]

The commenter who opposes the proposal questions the effectiveness of the proposed rule change, noting that FINRA acknowledged in the proposal that certain wash sales cannot be prevented without explaining why this is the case.[52] The commenter expresses concern that FINRA would treat such activity as acceptable when FINRA has stated that it can result in a significant distortion of the trading volume in a security, which thereby misleads market participants.[53] The commenter argues that by not prohibiting this activity, the proposed rule change is contrary to the public interest,[54] and that firms that consistently engage in wash sale activity should be required to incur the cost to prevent it, as the commenter notes that wash sales that occur on a regular basis are not mistakes, but the ''predictable, direct result of conduct in which the [f]irms have chosen to engage.''[55] The commenter suggests that FINRA revise its proposed rule to prohibit multiple algorithms within the same firm from effecting transactions with no change of beneficial ownership.[56] Finally, the commenter requests that FINRA explain how it currently, and in the future, will surveil for compliance with the proposed rule,[57] and notes that it is not clear in the proposal how FINRA will be able to conclude that these transactions were not carried out with manipulative or fraudulent intent.[58]

FINRA disagreed with the commenter, stating that the proposal will ''take affirmative steps to address trading activity that is generally permitted. . . but that can potentially result in misinformation in the marketplace.''[59] FINRA further stated that a reported trade with a firm on both sides in not per se illegitimate.[60] FINRA then noted, as stated in the proposal, that the proposed rule change is not meant to prevent all types of trading activity that result from separate strategies operating within a single firm.[61] FINRA explained that the proposal is meant to strike a balance between allowing a single firm to engage in separate trading activities and strategies (recognizing that this may result at times in self-trades) while ensuring firms have policies and procedures in place to identify and prevent patterns and practices of self-trades that may materially distort reported trade volume.[62]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–FINRA–2013–036 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B)[63] of the Act to determine whether the proposed rule change, as amended, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the

[40] *See* FINRA Letter, *supra* note 4, at 5–6. FINRA notes, however, that the use of the term ''self-trade'' in this context does not change members' existing obligations with respect to the prevention of wash sales under NASD Rule 3010 and FINRA Rule 2010.

[41] The commenter suggests specifically: ''policies and procedures reasonably designed to monitor for and prevent the otherwise unintentional transactions that result in no change of beneficial ownership that constitutes a material percentage of consolidated trading volume in a subject security on a particular day.'' *See* SIFMA Letter, *supra* note 4, at 3.

[42] *See id.*

[43] *See id.*

[44] *See* FINRA Letter, *supra* note 6, at 6.

[45] *See id.*

[46] *See id.,* at 6–7.

[47] *See* SIFMA Letter, *supra* note 4, at 3.

[48] *See id.*

[49] *See* FINRA Letter, *supra* note 6, at 5.

[50] *See id.*

[51] *See id.*

[52] *See* Anonymous Letter, *supra* note 4, at 1.

[53] *See id.,* at 2.

[54] *See id.,* at 3.

[55] *See id.,* at 2.

[56] *See id.*

[57] *See* Anonymous Letter, *supra* note 4, at 1.

[58] *See id.,* at 2.

[59] *See* FINRA Letter, *supra* note 6, at 3.

[60] *See id.* at 4.

[61] *See id.*

[62] *See id.*

[63] 15 U.S.C. 78s(b)(2)(B).

Commission seeks and encourages interested persons to provide additional comment on the proposed rule change, as amended, to inform the Commission's analysis of whether to approve or disapprove the proposal.

Pursuant to Section 19(b)(2)(B),[64] the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 15A(b)(6)[65] requires that the rules of a registered securities association be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Currently, FINRA Rule 5210 prohibits a member from reporting a transaction unless it believes such transaction was bona fide, and Supplementary Material .01 clarifies that a member should not report a transaction unless such member knows or has reason to believe that the transaction is bona fide. Through the proposed addition of Supplemental Material .02, as amended, FINRA appears to seek to create a presumption that ''self-trades,'' defined as the unintentional interaction of orders originating from the same firm that involve no change in the beneficial ownership of the security, generally are bona fide. In fact, FINRA would expressly provide that transactions resulting from orders that originate from unrelated algorithms or separate and distinct trading strategies within the same firm would generally be considered bona fide self-trades. FINRA would require members to have policies and procedures reasonably designed to prevent a pattern or practice of self-trades resulting from orders originating from a single or related algorithms or trading desks. FINRA's rationale for this requirement is that, even if transactions are not undertaken with fraudulent or manipulative intent, they can create a misimpression of the level of legitimate trading interest and activity in a security, and could adversely affect the price discovery process. FINRA expresses concern that firms will continue to allow this type of trading to occur rather than incur the costs necessary to prevent it, even though significant misinformation may be disseminated to the marketplace.

Despite raising these serious concerns about self-trades, however, FINRA's proposal would appear to provide substantial flexibility with respect to the required policies and procedures, such that a significant number of self-trades could continue to be publicly reported. Although not formally part of the proposed rule text, FINRA expresses the view in its filing that only those firms that engage in a pattern or practice of effecting self-trades that result in a material percentage of the trading volume in a particular security would generally violate Rule 5210. In addition, the policies and procedures requirement would not apply at all to orders originating from ''unrelated'' algorithms or ''separate and distinct'' trading strategies, which are broad terms for which little guidance is provided by FINRA. Accordingly, the Commission is concerned that the proposal may not achieve its stated purpose of addressing the identified problems associated with respect to self-trades, and therefore believes questions remain as to whether FINRA's proposal is consistent with the requirements of Section 15A(b)(6) of the Act.

In addition, the Commission notes that FINRA filed Amendment No. 1 and its response to comments on December 2, 2013, one day before the Commission was required to act on the proposed rule change. Although Amendment No. 1 seeks to address a number of concerns expressed by commenters, the Commission believes the institution of proceedings is appropriate to allow the Commission and commenters time to assess whether the amended proposal is consistent with the Act.

V. Procedures: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any others they may have identified with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 15A(b)(6) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[66]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by December 30, 2013. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 13, 2014.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2013–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2013–036. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

[64] 15 U.S.C. 78s(b)(2)(B).

[65] 15 U.S.C. 78*o*–3(b)(6).

[66] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

available publicly. All submissions should refer to File Number SR–FINRA–2013–036 and should be submitted on or before December 30, 2013. Rebuttal comments should be submitted by January 13, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[67]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29257 Filed 12–6–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70971; File No. SR–NYSE–2013–68]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending Section 907.00 of the Listed Company Manual To Expand the Suite of Complimentary Products and Services That Are Offered to Listed Companies

December 3, 2013.

I. Introduction

On October 1, 2013, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] a proposed rule change amending Section 907.00 of the Listed Company Manual (''Manual'') to expand the suite of complimentary products and services that are offered to all listed issuers and to certain current and newly listed issuers. The proposed rule change was published for comment in the **Federal Register** on October 22, 2013.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to amend Section 907.00 of the Manual to expand the suite of complimentary products and services that it offers to certain listed companies. Under current Exchange rules, all listed issuers receive some complimentary products and services through NYSE Market Access Center; however, certain tiers of currently listed issuers and newly listed issuers receive additional products and services. As specifically set forth in Section 907.00 of the Manual, the Exchange offers products and services in the following general categories to certain current and newly listed companies: market surveillance, web-hosting, market analytics and news distribution. According to the NYSE, the available products and services have approximate commercial values ranging from $10,000 to $45,000 annually.[5] The complimentary products and services are offered to companies under a tiered system based on shares issued and outstanding for currently listed companies, or global market value for newly listed companies.

With respect to currently listed companies, companies that have more than 270 million shares issued and outstanding (a ''Tier One Company'') are offered (i) a choice of market surveillance or market analytics products and services, and (ii) web-hosting products and services on a complimentary basis. Companies that have between 160 million and 269.9 million shares issued and outstanding (a ''Tier Two Company'') are offered a choice of market analytics or web-hosting products and services.

For newly listed companies, the Exchange offers different product and service options for an initial period of two years based on such company's global market value. A company with a global market value of $400 million or more (a ''Tier A Company'') is offered (i) a choice of market surveillance products and services for a period of twelve months or market analytics products and services for a period of 24 months, and (ii) web-hosting and news distribution products and services for a period of 24 months. Newly-listed companies with a global market value of less than $400 million (a ''Tier B Company'') are offered web-hosting and news distribution products and services for a period of 24 months.

The Exchange has proposed to amend Section 907.00 of the Manual to add three additional categories of complimentary products and services that will be offered to listed companies in the various tiers as described below. Specifically, the Exchange proposes to include corporate governance tools and advisory services (the ''Enhanced Package''), which the Exchange states has a commercial value of approximately $45,000 annually, and corporate governance tools (the ''Basic Package''), which the Exchange states has a commercial value of approximately $20,000 annually, to the list of complimentary products and services offered to certain listed companies. Further, the Exchange has proposed to offer data room services and virtual investor relation tools,[6] which the Exchange states has a commercial value of approximately $15,000–$20,000 annually, to the list of complimentary products and services offered to all listed companies. The Enhanced Package will be offered to Tier One Companies as a third alternative to the market surveillance and market analytics products they are already offered. The Basic Package will be offered to Tier Two Companies as a third alternative to the market analytics and web-hosting products they are already offered. The Basic Package also will be offered to Tier A Companies as a second alternative to the market analytics products and services that are offered for a 24-month period. The data room services and virtual investor relation tools will be offered to all listed companies on an annual basis. The Exchange has proposed to offer these tools through an affiliated service provider and may engage additional third-party providers in the future.

The Basic Package, offered to Tier Two and Tier A Companies, will consist of a combination of governance, risk, compliance and board tools for company directors and executives. In its filing, the Exchange noted that it expects that these tools will provide generic, easily implemented corporate governance advice and/or educational tools that are applicable to a wide range of listed companies.

The Enhanced Package, offered to Tier One Companies, will offer the same tools as the Basic Package but will also include access to advisory services. In its filing, the NYSE noted that such advisory services may include ongoing, periodic review of a company's corporate governance policies as well as benchmarking such polices against a company's peer group. In support of this change, the Exchange stated that the

[67] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 70628 (Oct. 8, 2013), 78 FR 62889 (''Notice'').

[5] Section 907.00 of the Manual currently states that the market surveillance products and services have a commercial value of approximately $45,000 annually, web-hosting products and services have a commercial value of approximately $12,000–$16,000 annually, market analytics products and services have a commercial value of approximately $20,000 annually and news distribution products and services have a commercial value of approximately $10,000 annually.

[6] In its filing, the NYSE explained that a data room is a password-protected Web site used for document storage. It is typically used to store due diligence materials to be reviewed in connection with transactional activity. Virtual investor relations tools are Web sites used to present roadshows and other investor presentations on a short-term basis, typically in connection with a specific transaction.

advisory services will offer companies a more individualized assessment of their corporate governance practices particular to the specific nature of their industry and organization.

As noted above, the specific tools and services offered by these products will be developed by the Exchange, through an affiliated service provider, or by third-party vendors. Companies that are offered these products are under no obligation to accept them and a company's listing on the Exchange is not conditioned upon acceptance of any product or service. According to the Exchange, from time to time, companies elect to purchase products and services from other vendors at their own expense rather than accepting comparable products and services offered by the Exchange.

Moreover, according to the Exchange, the proposed expansion of additional complimentary products and services will not benefit any category of listed companies over another one. Further, according to the Exchange, the additional Enhanced and Basic Packages discussed above will not increase the overall value of complimentary products and services offered to companies within each tier and are simply being offered as an additional alternative choice. The Commission also notes that under the proposal the data room services and virtual investor relation tools are being offered equally to all listed companies.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act.[7] Specifically, the Commission believes it is consistent with the provisions of Sections 6(b)(4) and (5) of the Act,[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Moreover, the Commission believes that the proposed rule change is consistent with Section 6(b)(8) of the Act[9] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that it is consistent with the Act for the Exchange to give issuers under Tier One the option of receiving corporate governance tools and advisory services as an alternative to market surveillance or market analytics products and services, and in addition to the other products and services they are currently offered, as well as to allow issuers under Tier Two and Tier A the option of receiving corporate governance tools as an alternative, and in addition, to the other products and services they are currently offered. In addition, the Commission believes that it is consistent with the Act for the Exchange to offer the data room services and virtual investor relation tools to all listed issuers, irrespective of whether they are eligible for additional services under a tier. The Exchange has represented that it faces competition in the market for listing services, and it competes in part by improving the quality of the services that it offers to listed companies. According to the Exchange, by offering products and services on a complimentary basis and ensuring that it is offering the services most valued by its listed issuers, it improves the quality of the services that listed companies receive. Accordingly, the Commission believes that the NYSE's proposal reflects the current competitive environment for exchange listings among national securities exchanges and is appropriate and consistent with Section 6(b)(8).

Moreover, the Commission believes that it is appropriate for the Exchange to offer varying services to different categories of issuers.[10] According to the Exchange, Tier One Companies, because they tend to be larger, more complex organizations, would benefit most from the individualized attention offered by the advisory services element of the Enhanced Package. By comparison, the Exchange states that Tier Two and Tier A Companies tend to be mid-sized companies and therefore are smaller, less complex organizations than Tier One Companies that can benefit from the general tools offered by the Basic Package. Further, according to the Exchange most Tier B Companies are smaller and, less complex organizations than Tier Two and Tier A companies and are unlikely to require the tools offered by the Basic Package.[11] Additionally, the Enhanced and Basic Packages are simply being offered as an additional alternative choice and are approximately equal to the commercial value of other products already being offered to listed companies in each applicable tier. Further, all listed companies will continue to receive some level of free services, including the addition of the free data room services and virtual investor relation tools being approved in this order. Finally, the Commission believes that the change will provide greater transparency under the Exchange's rules as to the actual fees, and the value of free products and services, applicable to listed companies.

Based on the factors noted above, the Commission continues to believe that the products and services and their commercial value are equitably allocated among issuers consistent with Section 6(b)(4) of the Act, and that the rule does not unfairly discriminate between issuers consistent with Section 6(b)(5) of the Act.[12]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (NYSE–2013–68) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29262 Filed 12–6–13; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] 15 U.S.C. 78f(b)(8).

[10] *See* Securities Exchange Act Release No. 65127 (Aug. 12, 2011), 76 FR 51449 (Aug. 18, 2011) (SR–NYSE–2011–20) (''Approval Order''), finding that the existing tiers are consistent with the Act. In particular, the Approval Order states that while not all issuers receive the same level of services, NYSE has stated that trading volume and market activity are related to the level of services that the listed companies would use in the absence of complimentary arrangements. The Commission found, among other things, that ''. . . the products and services and their commercial value are equitably allocated among issuers consistent with Section 6(b)(4) of the Act, and the rule does not unfairly discriminate between issuers consistent with Section 6(b)(5) of the Act.'' *See* Approval Order, 76 FR at 51452.

[11] *See* Notice, *supra* note 4.

[12] *See also* Approval Order, *supra* note 10.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70969; File No. SR–Phlx–2013–114]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Customer Rebate Program

December 3, 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 25, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Customer Rebate Program in Section B of the Pricing Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase certain Customer rebates in the ''Customer Rebate Program,'' in Section B of the Pricing Schedule to provide members an opportunity to receive higher Customer rebates.

Currently, the Exchange has a Customer Rebate Program consisting of four tiers which pays Customer rebates on two Categories, A [3] and B,[4] of transactions.[5] A Phlx member qualifies for a certain rebate tier based on the percentage of total national customer volume in multiply-listed options which it transacts monthly on Phlx. The Exchange calculates Customer volume in Multiply Listed Options by totaling electronically-delivered and executed volume, except volume associated with electronic Qualified Contingent Cross (''QCC'') Orders,[6] as defined in Exchange Rule 1080(o).[7] Today, the Exchange pays the following rebates: [8]

Customer rebate tiers	Percentage thresholds of national customer volume in multiply-listed equity and ETF options classes, excluding SPY options (monthly)	Category A	Category B
Tier 1	0.00%–0.75%	$0.00	$0.00
Tier 2	Above 0.75%–1.60%	0.12	0.17
Tier 3	Above 1.60%–2.50%	0.14	0.17
Tier 4	Above 2.50%	0.15	0.17

The Exchange is proposing to amend the Customer Rebates in both Categories A and B in Tiers 3 and 4 to increase the rebates by $0.02 per contract. The proposed Tier 3 Category A rebate would be increased from $0.14 to $0.16 per contract. The proposed Tier 3 Category B rebate would be increased from $0.17 to $0.19 per contract. The proposed Tier 4 Category A rebate would be increased from $0.15 to $0.17 per contract. The proposed Tier 4 Category B rebate would be increased from $0.17 to $0.19 per contract.

The Exchange also proposes to amend Tier 2, Categories A and B, to pay a $0.02 per contract rebate in addition to the applicable Tier 2 rebate to a Specialist or Market Maker, or its affiliate under Common Ownership,[9] provided the Specialist or Market Maker has reached the Monthly Market Maker Cap [10] as defined in Section II. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Category A rebates are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II of the Pricing Schedule. Rebates are paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest, except in the case of Customer PIXL Orders that are greater than 999 contracts. All Customer PIXL Orders that are greater than 999 contracts are paid a rebate regardless of the contra party to the transaction.

[4] Category B rebates are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II. Rebates are paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest, except in the case of Customer PIXL Complex Orders that are greater than 999 contracts. All Customer PIXL Complex Orders that are greater than 999 contracts are paid a rebate regardless of the contra-party to the transaction.

[5] *See* Section B of the Pricing Schedule.

[6] A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. *See* Rule 1080(o). *See also* Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR–Phlx–2011–47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (''QCTs'') that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

[7] Members and member organizations under common ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Common ownership means members or member organizations under 75% common ownership or control.

[8] SPY is included in the calculation of Customer volume in Multiply Listed Options that are electronically-delivered and executed for purposes of the Customer Rebate Program, however, the rebates do not apply to electronic executions in SPY.

[9] The term ''Common Ownership'' means members or member organizations under 75% common ownership or control.

[10] Specialists and Market Makers are subject to a ''Monthly Market Maker Cap'' of $550,000 for: (i) Electronic and floor Option Transaction Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote

Continued

Exchange believes that offering higher Tier 2, 3 and 4 rebates will encourage market participants to direct a greater number of Customer orders to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that its proposal to increase the Customer rebates in Tiers 3 and 4 in Categories A and B by $0.02 per contract is reasonable because it will attract a larger amount of Customer liquidity to the Exchange. Today, Phlx offers members certain Customer rebates to encourage Phlx member organizations to direct Customer order flow to the Exchange, and the proposal will provide an additional incentive for Customer order flow. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange believes that its proposal to increase the Customer rebates in Tiers 3 and 4 in Categories A and B by $0.02 per contract is equitable and not unfairly discriminatory because it will be applied to all market participants in a uniform matter. All members are eligible to receive the rebate provided they submit a qualifying number of electronic Customer volume.

The Exchange believes that its proposal to pay a $0.02 per contract rebate in addition to the applicable Tier 2 rebate to a Specialist or Market Maker, or its affiliate under Common Ownership, provided the Specialist or Market Maker has reached the Monthly Market Maker Cap is reasonable because the Exchange intends to encourage Specialists and Market Makers to transact Customer orders on the Exchange to receive the enhanced rebate.

The Exchange believes that its proposal to pay a $0.02 per contract rebate in addition to the applicable Tier 2 rebate to a Specialist or Market Maker, or its affiliate under Common Ownership, provided the Specialist or Market Maker has reached the Monthly Market Maker Cap is equitable and not unfairly discriminatory because unlike other market participants, Specialists and Market Makers have burdensome quoting obligations [13] to the market that do not apply to Customers, Professionals, Firms and Broker-Dealers. Specialists and Market Makers serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace. Additionally, Specialists and Market Makers incur costs unlike other market participants including, but not limited to, PFOF and other costs associated with market making activities,[14] which results in a higher average cost per execution as compared to Firms, Broker-Dealers and Professionals. The proposed differentiation as between Specialists and Market Makers as compared to other market participants recognizes the differing contributions made to the trading environment on the Exchange by these market participants. The Exchange is continuing to offer the Tier 2 rebate to all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose an undue burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the Customer Rebate Program will continue to encourage Customer order flow to be directed to the Exchange. By incentivizing members to route Customer orders, the Exchange desires to attract liquidity to the Exchange, which in turn benefits all market participants. All market participants are eligible to qualify for a Customer Rebate. The Exchange believes this pricing amendment does not impose a burden on competition but rather that the proposed rule change will continue to promote competition on the Exchange.

The Exchange does not believe that offering Specialists and Market Makers an enhanced rebate of $0.02 per contract in addition to the applicable Tier 2 rebate creates an undue burden on competition because Specialists and Market Makers have burdensome quoting obligations [15] to the market that do not apply to Customers, Professionals, Firms and Broker-Dealers. Specialists and Market Makers serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace.

The Exchange operates in a highly competitive market, comprised of twelve options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine

that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Section II) are excluded from the Monthly Market Maker Cap. In addition, Specialists or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order; and (ii) have reached the Monthly Market Maker Cap are assessed a $0.17 per contract fee.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[14] Specialists and Market Makers pay for certain data feeds including the SQF Port Fee. SQF Port Fees are listed in the Exchange's Pricing Schedule at Section VII. SQF is an interface that allows Specialists and Market Makers to connect and send quotes into Phlx XL and assists them in responding to auctions and providing liquidity to the market.

[15] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2013–114 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–114. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–114 and should be submitted on or before December 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29260 Filed 12–6–13; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70972; File No. SR–MIAX–2013–54]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

December 3, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 26, 2013, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Rule 510, Interpretations and Policies .01 to extend the pilot program for the quoting and trading of certain options in pennies (the ''Penny Pilot Program'').

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is a participant in an industry-wide pilot program that provides for the quoting and trading of certain option classes in penny increments (the ''Penny Pilot Program'' or ''Program''). Specifically, the Penny Pilot Program allows the quoting and trading of certain option classes in minimum increments of $0.01 for all series in such option classes with a price of less than $3.00; and in minimum increments of $0.05 for all series in such option classes with a price of $3.00 or higher. Options overlying the PowerShares QQQ Trust (''QQQQ'')®, SPDR S&P 500 Exchange Traded Funds (''SPY''), and iShares Russell 2000 Index Funds (''IWM''), however, are quoted and traded in minimum increments of $0.01 for all series regardless of the price. The Penny Pilot Program was initiated at the then existing option exchanges in January 2007 and currently includes more than 300 of the most active option classes. The Penny Pilot Program is currently scheduled to expire on December 31, 2013.[4] The purpose of the proposed rule change is to extend the Penny Pilot Program in its current format through June 30, 2014.

In addition to the extension of the Penny Pilot Program through June 30, 2014, the Exchange will replace any Penny Pilot issues that have been delisted with the next most actively traded multiply listed option classes that are not yet included in the Penny Pilot Program. The replacement issues will be selected based on trading activity in the previous six months and will be added to the Penny Pilot Program on the second trading day following January 1, 2014. Please note, the month immediately preceding a replacement class's addition to the Pilot program (*i.e.,* December) will not be used for purposes of the six-month analysis. Thus, a replacement added on the second trading day following January 1, 2014 will be identified based on trading activity from June 1, 2013 through November 30, 2013. Rule 510 has been updated to reflect the new date

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 69785 (June 18, 2013), 78 FR 37856 (June 24, 2013) (SR–MIAX–2013–28).

replacement issues will be added to the Penny Pilot Program.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) [5] of the Act in general, and furthers the objectives of Section 6(b)(5) [6] of the Act in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change, which extends the Penny Pilot Program for six months, allows the Exchange to continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. In addition, consistent with previous practices, the Exchange believes the other options exchanges will be filing similar extensions of the Penny Pilot Program.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] 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 [9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[11] However, pursuant to Rule 19b–4(f)(6)(iii),[12] 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 immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[13] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

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.

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–MIAX–2013–54 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–MIAX–2013–54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2013–54 and should be submitted on or before December 30, 2013.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29263 Filed 12–6–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70970; File No. SR–BOX–2013–53]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Proposed Rule Change To Amend IM–3120–2 to Rule 3120 To Extend the Pilot Program That Eliminated the Position Limits for Options on SPDR S&P 500 ETF

December 3, 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 21, 2013, BOX Options Exchange LLC (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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend IM–3120–2 to Rule 3120 to extend the pilot program that eliminated the position limits for options on SPDR S&P 500 ETF (''SPY'') (''SPY Pilot Program''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend IM–3120–2 to Rule 3120 to extend the time period of the SPY Pilot Program,[3] which is currently scheduled to expire on November 27, 2013, through January 27, 2015.

This filing does not propose any substantive changes to the SPY Pilot Program. In proposing to extend the SPY Pilot Program, the Exchange reaffirms its consideration of several factors that supported the original proposal of the SPY Pilot Program, including (1) the availability of economically equivalent products and their respective position limits, (2) the liquidity of the option and the underlying security, (3) the market capitalization of the underlying security and the related index, (4) the reporting of large positions and requirements surrounding margin, and (5) the potential for market on close volatility.

In the original proposal to establish the SPY Pilot Program, the Exchange stated that if it were to propose an extension, permanent approval or termination of the program, the Exchange would submit, along with any filing proposing such amendments to the program, a report providing an analysis of the SPY Pilot Program covering the first twelve (12) months during which the SPY Pilot Program was in effect (the ''Pilot Report'').[4] However, because not all self-regulatory organizations (''SROs'') have adopted similar rules eliminating position limits on SPY and market participants that are members of such SROs are required to comply with the more restrictive SPY position limits, no market participants have availed themselves of the SPY Pilot Program. As a result, there is no meaningful data available to compile the Pilot Report at this time and therefore the Exchange is not filing a Pilot Report with this extension request. The Exchange believes it is appropriate to extend the SPY Pilot Program to provide time for other SROs to adopt similar rules eliminating position limits on SPY so that the Exchange can prepare a meaningful Pilot Report if it were to propose any further extension, permanent approval or termination of the program.

As with the original proposal to establish the SPY Pilot Program, the Exchange represents that the Pilot Report will be submitted within thirty (30) days of the end of the first twelve (12) months of the extend pilot period. The Pilot Report will detail the size and different types of strategies employed with respect to positions established as a result of the elimination of position limits in SPY. In addition, the Pilot Report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program. The Pilot Report will compare the impact of the pilot program, if any, on the volumes of SPY options and the volatility in the price of the underlying SPY shares, particularly at expiration. In preparing the report the Exchange will utilize various data elements such as volume and open interest. In addition, the Exchange has represented that it will make available to Commission staff data elements relating to the effectiveness of the pilot.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[5] in general, and Section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extending the SPY Pilot Program promotes just and equitable principles of trade by permitting market participants, including market makers, institutional investors and retail investors, to establish greater positions when pursuing their investment goals and needs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any aspect of competition, whether between the Exchange and its competitors, or among market

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67936 (September 27, 2012), 77 FR 60491 (October 3, 2012) (Notice of Filing and Immediate Effectiveness of SR–BOX–2012–013).

[4] *See supra* note 3.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

participants. Instead, the proposed rule change is designed to allow the SPY Pilot Program to continue while other SROs adopt similar provisions and meaningful data can be compiled into a Pilot Report.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] 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 upon filing. The Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will permit the SPY Pilot Program to continue without interruption. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2013–53 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–BOX–2013–53. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2013–53 and should be submitted on or before December 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29261 Filed 12–6–13; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 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).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70967; File No. SR–ISE–2013–62]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program That Eliminated the Position and Exercise Limits for Options on SPDR S&P 500 ETF

December 3, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 20, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its rules to extend the pilot program that eliminated position and exercise limits for physically-settled options on the SPDR S&P ETF Trust (''SPY'') (''SPY Pilot Program''). The text of the proposed rule change is available on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange's Web site *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to amend Supplementary Material .01 to ISE Rule 412 and Supplementary Material .01 of ISE Rule 414 to extend the time period of the SPY Pilot Program, which is scheduled to expire on December 5, 2013,[3] through February 5, 2015. This filing is based on a filing recently submitted by NYSE MKT LLC, which extends the SPY Pilot Program for an additional fourteen months on that exchange.[4]

This filing does not propose any substantive changes to the SPY Pilot Program. In proposing to extend the SPY Pilot Program, the Exchange reaffirms its consideration of several factors that supported the original proposal of the SPY Pilot Program, including (1) the liquidity of the option and the underlying security, (2) the market capitalization of the underlying security and the related index, (3) the reporting of large positions and requirements surrounding margin, and (4) financial requirements imposed by ISE and the Commission.

In the original proposal to establish the SPY Pilot Program, the Exchange stated that if it were to propose an extension, permanent approval or termination of the program, the Exchange would submit, along with any filing proposing such amendments to the program, a report providing an analysis of the SPY Pilot Program covering the first twelve (12) months during which the SPY Pilot Program was in effect (the ''Pilot Report'').[5] However, because not all self-regulatory organizations (''SROs'') have adopted similar rules eliminating position limits on SPY and market participants that are members of such SROs are required to comply with the more restrictive SPY position limits, no market participants have availed themselves of the SPY Pilot Program. As a result, there is no meaningful data available to compile the Pilot Report at this time and therefore the Exchange is not filing a Pilot Report with this extension request. The Exchange believes it is appropriate to extend the SPY Pilot Program to provide time for other SROs to adopt similar rules eliminating position limits on SPY so that the Exchange can prepare a meaningful Pilot Report if it were to propose any further extension, permanent approval or termination of the program.

As with the original proposal to establish the SPY Pilot Program, the Exchange represents that the Pilot Report will be submitted within thirty (30) days of the end of the first twelve (12) months of the extended SPY Pilot Program time period and will cover the twelve months just ended. The Pilot Report will detail the size and different types of strategies employed with respect to positions established as a result of the elimination of position limits in SPY. In addition, the Pilot Report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the SPY Pilot Program. The Pilot Report will compare the impact of the SPY Pilot Program, if any, on the volumes of SPY options and the volatility in the price of the underlying SPY shares, particularly at expiration. In preparing the report the Exchange will utilize various data elements such as volume and open interest. In addition the Exchange will make available to Commission staff data elements relating to the effectiveness of the SPY Pilot Program.

The Exchange also proposes to adopt rule text to codify that the SPY Pilot Program is subject to a pilot period that ends on February 5, 2015.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Securities Exchange Act of 1934[6] (the ''Act'') in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that extending the SPY Pilot Program promotes just and equitable principles of trade by permitting market participants, including market makers, institutional investors and retail investors, to establish greater positions when pursuing their investment goals and needs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any aspect of competition, whether between the Exchange and its competitors, or among market participants. Instead, the proposed rule change is designed to allow the SPY Pilot Program to continue while other SROs adopt similar provisions and meaningful data can be compiled into a Pilot Report.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

[3] *See* Exchange Act Release No. 68000 (October 5, 2012), 77 FR 62300 (October 12, 2012) (SR–ISE–2012–81).

[4] *See* Securities Exchange Act Release No. 70734 (October 22, 2013), 78 FR 64255 (October 28, 2013) (SR–NYSEMKT–2013–83).

[5] *See* Exchange Act Release No. 68000 (October 5, 2012), 77 FR 62300 (October 12, 2012) (SR–ISE–2012–81).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change as required by Rule 19b–4(f)(6).

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] 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. The Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will benefit market participants as it will allow the SPY Pilot Program to continue uninterrupted. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2013–62 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–ISE–2013–62. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2013–62 and should be submitted on or before December 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29258 Filed 12–6–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 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).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of ICC Worldwide, Inc., Innova Pure Water, Inc., Paladin Holdings, Inc., Performing Brands, Inc., Petrol Oil and Gas, Inc., Platinum Research Organization, Inc., Renew Energy Resources, Inc., and Vital Living, Inc.; Order of Suspension of Trading

December 5, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ICC Worldwide, Inc. because it has not filed any periodic reports since the period ended June 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Innova Pure Water, Inc. because it has not filed any periodic reports since the period ended March 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Paladin Holdings, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Performing Brands, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Petrol Oil and Gas, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Platinum Research Organization, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Renew Energy Resources, Inc. because it has not filed any periodic reports since the period ended December 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Vital Living, Inc. because it has not filed any periodic

reports since the period ended June 30, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on December 5, 2013, through 11:59 p.m. EST on December 18, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–29416 Filed 12–5–13; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Catch By Gene, Inc., Four Star Holdings, Inc., Great Spirits, Inc., and Texas Sweet Crude Oil Corp.; Order of Suspension of Trading

December 4, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Catch By Gene, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Four Star Holdings, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Great Spirits, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Texas Sweet Crude Oil Corp. because it has not filed any periodic reports since the period ended September 30, 2010.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on December 4, 2013, through 11:59 p.m. EST on December 17, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–29280 Filed 12–4–13; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Community Alliance, Inc., Defi Global, Inc., Easy Energy, Inc., Industry Concept Holdings, Inc., and Transworld Benefits International, Inc.; Order of Suspension of Trading

December 4, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Community Alliance, Inc. because it has not filed any periodic reports since the period ended August 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Defi Global, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Easy Energy, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Industry Concept Holdings, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Transworld Benefits International, Inc. because it has not filed any periodic reports since the period ended December 31, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on December 4, 2013, through 11:59 p.m. EST on December 17, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–29278 Filed 12–4–13; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Solutions Capital I, L.P., License No. 03/03–0247; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Solutions Capital I, L.P., 1001 19th Street North, 10th Floor, Arlington, VA 22209, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Solutions Capital I L.P. proposes to provide loan financing to Dorsey School of Business Holdings, Inc., 30775 Barrington, Suite 100, Madison Heights, MI 48071 (''Dorsey'').

The financing is brought within the purview of § 107.730(a)(4) of the Regulations because Solutions Capital I, L.P. proposes to purchase the investment in Dorsey from Solutions Capital II, L.P., an Associate of Solutions Capital I, L.P. Therefore this transaction is considered a financing constituting a conflict of interest requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Javier Saade,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2013–29176 Filed 12–6–13; 8:45 am]

BILLING CODE 8025–01–M

TENNESSEE VALLEY AUTHORITY

Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Tennessee Valley Authority.

ACTION: Notice of Request for Extension of Currently Approved Information Collection.

SUMMARY: The information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this renewal of an existing information collection as provided by 5 CFR Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation should be directed to the Agency Clearance Officer: Mark Winter, Tennessee Valley Authority, 1101 Market Street (MP–3C), Chattanooga, Tennessee 37402–2801; (423) 751–6004.

Comments should be sent to the Agency Clearance Officer no later than *February 7, 2014.*

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission.

Title of Information Collection: EnergyRight® Program.

Frequency of Use: On Occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 29,000.

Estimated Total Annual Burden Hours: 8,700.

Estimated Average Burden Hours per Response: .3.

Need For and Use of Information: This information is used by distributors of TVA power to assist in identifying and financing energy improvements for their electrical energy customers.

Michael T. Tallent,

Director, Enterprise Information Security & Policy.

[FR Doc. 2013–29218 Filed 12–6–13; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: National Air Tour Safety Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 24, 2013, vol. 78, no. 185, page 58597. A final rule published on February 13, 2007 (72 FR 6883) set safety and oversight rules for a broad variety of sightseeing and commercial air tour flights. This final rule improved the overall safety of commercial air tours by requiring all air tour operators to abide by the safety provisions found in 14 CFR Part 136.

DATES: Written comments should be submitted by January 8, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0717.

Title: National Air Tour Safety Standards.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: This final rule set safety and oversight rules for a broad variety of sightseeing and commercial air tour flights. The FAA uses the information it collects and reviews to ensure compliance and adherence to regulations and, if necessary, take enforcement action on violators of the regulations.

Respondents: 3,480 pilots and air tour operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden: 30,321 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on December 2, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–29237 Filed 12–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Extended Operations (ETOPS) of Multi-Engine Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 24, 2013, vol. 78, no. 185, pages 58598–58599. The FAA collects information to ensure that aircraft for long range flights are equipped to minimize diversions, to preclude and prevent diversions in remote areas, and to ensure that all personnel are trained to minimize any adverse impacts of a diversion.

DATES: Written comments should be submitted by January 8, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0718.

Title: Extended Operations (ETOPS) of Multi-Engine Airplanes.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: A final rule published on January 16, 2007 (72 FR 1807) codified previous practices that permitted certificated air carriers to operate two-engine airplanes over long-range routes and extended the procedures for extended operations to all passenger-carrying operations on routes beyond 180 minutes from an alternate airport. This option is voluntary for operators and manufacturers. The FAA uses this information collection to ensure that aircraft for long range flights are equipped to minimize diversions, to preclude and prevent diversions in remote areas, and to ensure that all personnel are trained to minimize any adverse impacts of a diversion.

Respondents: 18 operators and manufacturers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 7 hours.

Estimated Total Annual Burden: 253,384 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on December 2, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–29228 Filed 12–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Verification of Authenticity of Foreign License, Rating, and Medical Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 24, 2013, vol. 78, no. 185, page 58598. The information is used to identify airmen to allow the agency to verify their foreign license being used to qualify for a U.S. certificate. Respondents are holders of foreign licenses wishing to obtain U.S. certificates.

DATES: Written comments should be submitted by January 8, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0724.

Title: Verification of Authenticity of Foreign License, Rating, and Medical Certification.

Form Numbers: FAA Form 8060–71.

Type of Review: Renewal of an information collection.

Background: The information collected is used to properly identify airmen to allow the agency to verify their foreign license being used to qualify for a U.S. certificate. The respondents are holders of foreign licenses wishing to obtain a U.S. certificate. A person who is applying for a U.S. pilot certificate/rating on the basis of a foreign-pilot license must apply for verification of that license at least 90 days before arriving at the designated FAA FSDO where the applicant intends to receive the U.S. pilot certificate.

Respondents: Approximately 8,700 foreign applicants for U.S. certificates annually.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden: 1,450 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on December 2, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–29231 Filed 12–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Physiological Training

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 24, 2013, vol. 78, no. 185, page 58598. This report is necessary to

establish qualifications of eligibility to receive voluntary physiological training with the US Air Force and will be used as proper evidence of training. The information is collected from pilots and crewmembers for application to receive voluntary training.

DATES: Written comments should be submitted by January 8, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0101.

Title: Physiological Training.

Form Numbers: AC Form 3150–7.

Type of Review: Renewal of an information collection.

Background: The submission of this application information is authorized by the Federal Aviation Reauthorization Act 1996. The collection of information is necessary to determine if the applicants meet the qualifications for training under the FAA/USAF training agreement. The information is used by the Aeromedical Education Division (AAM–400) to determine if the applicant is qualified to receive physiological training.

Respondents: An estimated 5,500 pilots and crewmembers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 8 minutes.

Estimated Total Annual Burden: 733 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on December 2, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–29229 Filed 12–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Domestic And International Flight Plans

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 24, 2013, vol. 78, no. 185, page 58597. Flight plan information is used to govern the flight of aircraft for the protection and identification of aircraft and property and persons on the ground.

DATES: Written comments should be submitted by January 8, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0026.

Title: Domestic And International Flight Plans.

Form Numbers: FAA forms 7233–1 and 7233–4.

Type of Review: Renewal of an information collection.

Background: Title 49 U.S.C., paragraph 40103(b) authorizes regulations governing the flight of aircraft. 14 CFR 91 prescribes requirements for filing domestic and international flight plans. Information is collected to provide services to aircraft inflight and protection of persons/property on the ground.

Respondents: Approximately 300,000 air carriers, operators and pilots.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1–3 minutes.

Estimated Total Annual Burden: 287,447 hours.

ADDRESS: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on December 2, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–29239 Filed 12–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–58]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments on this petition must identify the petition docket number and must be received on or before December 30, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2013–0647 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Stegeman, Aerospace Engineer, Standards Office (ACE–111), Small Airplane Directorate, Aircraft Certification Service, FAA; telephone number (816) 329–4140, fax number (816) 329–4090, email at *robert.stegeman@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

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

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–0647.

Petitioner: Sherpa Aircraft, Inc.

Section of 14 CFR Affected: 14 CFR 23.562.

Description of Relief Sought: Petitioner requests relief from requirements for emergency landing dynamic conditions for qualification of crew/passenger seat and restraint system to permit type certification of its SH550 and SH650 aircraft.

[FR Doc. 2013–29253 Filed 12–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–59]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before December 30, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2013–0795 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Hancock, Flight Test Pilot, Project Support (ACE–112), Small Airplane Directorate, Aircraft Certification Service, FAA; telephone number (816) 329–4143, fax number (816) 329–4090, email at *brian.hancock@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 3, 2013.

Lirio Liu,

Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2013–0795.

Petitioner: Cirrus Design Corporation.

Section of 14 CFR Affected: 14 CFR 23.177(b).

Description of Relief Sought: Petitioner requests relief from static directional and lateral stability requirements for its Cirrus model SR20 aircraft. The aircraft were manufactured with a wing design that required a rudder aileron interconnect (RAI) to comply with requirements of section 23.177(b); however, flight tests with use of a roll trim system in lieu of the RAI show a level of safety at least equal to the intent of the static lateral stability requirements of that section.

[FR Doc. 2013–29252 Filed 12–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land; Burnett County Airport, Siren WI.

SUMMARY: The FAA is considering a proposal to change 24.19 acres of airport land from aeronautical use to non-aeronautical use of airport property located at Burnett County Airport, Siren WI. The aforementioned land is not needed for aeronautical use.

The Gandy Dancer Trail is a large recreational trail system in Western Wisconsin. A portion of the trail ran across the approach area to the runway at the Burnett County Airport. This section of the trail was relocated away from the runway to follow the west edge of airport property. The old trail was converted to airport use.

DATES: Comments must be received on or before January 8, 2014.

ADDRESSES: Documents are available for review by appointment at the FAA Airports District Office, Sandra DePottey, Program Manager, 6020 28th Ave South, Room 102, Minneapolis MN 55450, Telephone: (612) 253–4610/Fax: (612) 253–4611 and Burnett County Government Center, 7410 County Road K, Siren, WI 54872.

Written comments on the Sponsor's request must be delivered or mailed to: Sandra DePottey, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Ave. South, Room 102, Minneapolis MN 55450, Telephone Number: (612) 253–4610/FAX Number: (612) 253–4611.

FOR FURTHER INFORMATION CONTACT: Sandra DePottey, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Ave South Room 102, Minneapolis MN 55450. Telephone Number: (612) 253–4610/FAX Number: (612) 253–4611.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The airport property for the relocated trail was originally acquired with State and local funds. The sponsor has received FMV for the property in the form of a land swap. There are no impacts to the airport by allowing the airport to dispose of the property. The land will continue to be used by the Wisconsin Department of Natural Resources (WiDNR) for a recreational trail.

The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Burnett County Airport, Siren, Wisconsin from federal land covenants, subject to a reservation for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B section 22.16. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

A PART OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 39 NORTH, RANGE 16 WEST, TOWN OF MEENON, BURNETT COUNTY, WISCONSIN

Issued in Minneapolis Minnesota, on October 31, 2013.

Chris Hugunin,

Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2013–29244 Filed 12–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0101; Notice 1]

Morgan 3 Wheeler Limited, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of Petition.

SUMMARY: Morgan 3 Wheeler Limited [1] (Morgan) has determined that certain model year (MY) 2012 and 2013 Morgan model M3W three-wheeled motorcycles do not fully comply with either paragraph S7.9.6.2(b) or paragraph S10.7.1.2.2 (depending on the vehicles date of manufacture) of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Morgan has filed an appropriate report dated August 6, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

DATES: The closing date for comments on the petition is January 8, 2014.

[1] Morgan 3 Wheeler Limited is a manufacturer of motor vehicles and is registered under the laws of England.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: 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 Deliver:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: Logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. Morgan's petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see

implementing rule at 49 CFR part 556), Morgan submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Morgan's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles involved: Affected are approximately 139 MY 2012 and 2013 Morgan model M3W three-wheeled motorcycles manufactured during the period August 1, 2012 to August 14, 2013.

III. Noncompliance: Morgan explains that the noncompliance is that the affected vehicles were equipped with dual horizontally-mounted headlamps mounted 29 inches apart (lens edge to lens edge) rather than within 200 mm as stated in FMVSS No. 108. In addition, Morgan states that the headlamps are not marked with the symbol ''DOT.''

IV. Rule Text: Paragraphs S7.9.6.2(b) and S10.17.1.2.2 of FMVSS No. 108 require in pertinent part:

Paragraph S7.9.6.2(b) (applies only to the subject vehicles manufactured before December 1, 2012).

If the system consists of two headlamps, each of which provides both an upper and lower beam, the headlamps shall be mounted either at the same height and symmetrically disposed about the vertical centerline or mounted on the vertical centerline. If the headlamps are horizontally disposed about the vertical centerline, the distance between the closest edges of their effective projected luminous lens areas shall not be greater than 200 mm (8 in.).

Paragraph S10.17.1.2.2 (applies only to the subject vehicles manufactured after December 1, 2012).

If the headlamps are horizontally disposed about the vertical centerline, the distance between the closest edges of their effective projected luminous lens areas must not be greater than 200 mm.

V. Summary of Morgan's Analyses: Morgan stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. Horizontal Separation of the Headlamps

• Morgan contends that the headlamps meet the technical requirements of FMVSS No. 108 and that the current horizontal spacing of 29 inches is in the best interests of road safety. If the M3W were compliant with the existing motorcycle head lamp spacing requirement, other road users would not have an accurate indication of the width of an oncoming M3W.

• For ongoing production Morgan shall source an FMVSS No. 108 compliant headlamp and shall install such lamp in accordance with FMVSS No. 108 along the vertical centerline of the M3W. This lamp shall be wired to the vehicle lighting switch. The two lamps separated by 29 inches shall remain available as optional driving lamps wired to a separate switch and shall be supplemental driving lamps. This change in specification shall apply to any US retail sales after the date of Morgan's notification of noncompliance submitted under 49 CFR part 573 for the subject vehicles.

II. Lens Marking

• Morgan contends that the noncompliance is inconsequential as it relates to motor vehicle safety on the basis that the lamps meet the substantive requirements of FMVSS No. 108 and Morgan owners almost exclusively go to Morgan dealers for replacement parts.

• For ongoing production, the headlamps shall have all FMVSS required markings.

Morgan also presents several arguments as to how it believes previous NHTSA inconsequential noncompliance determinations can be applied to a decision on its petition. See Morgan's petition for a complete discussion of its reasoning.

In addition, Morgan knows of no reports of injuries or other safety issues in the US or the rest of the world caused by the subject noncompliance.

In summation, Morgan believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

In its petition, Morgan also requested that NHTSA amend the headlamp spacing requirements in FMVSS No. 108 during future rulemaking. This request cannot be considered as part of the instant petition as filed under 49 CFR part 556. However, Morgan may consider petitioning the Agency for rulemaking. The appropriate type of petition to request a change in a rule is one filed under 49 CFR Part 552 *Petitions for Rulemaking, Defect, and Non-Compliance Orders.*

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the vehicles that Morgan no longer controlled at the time it determined that the noncompliance existed. However, a decision on this petition cannot relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant motor vehicles under their control after Morgan notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Issued on: December 2, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–29249 Filed 12–6–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35724 (Sub-No. 1)]

California High-Speed Rail Authority—Construction Exemption—In Fresno, Kings, Tulare, and Kern Counties, California

By petition filed on September 26, 2013, California High-Speed Rail Authority (Authority), a state agency formed in 1996, seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for authority to construct an approximately 114-mile high-speed passenger rail line between Fresno and Bakersfield, Cal. (the Line).

The Line is the second of nine segments of the planned California High-Speed Train System (HST System), which would, when completed, provide high-speed intercity passenger rail service over more than 800 miles of new rail line throughout California.[1] The complete system would connect the major population centers of Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the ''Inland Empire'' (*i.e.,* the region east of the Los Angeles metropolitan area), Orange County, and San Diego. The Authority states that it plans to contract with a

[1] Earlier this year the Board granted an exemption for construction of the first segment of the HST System, between Merced and Fresno, Cal. (Merced-to-Fresno segment). *See Cal. High-Speed Rail Auth.—Constr. Exemption—in Merced, Madera & Fresno Cntys., Cal.,* FD 35724 (STB served June 13, 2013) (*June Decision*).

passenger rail operator to commence HST System operations once it has completed construction of the portion of the HST system between Merced and the San Fernando Valley, which includes the Line.

Request for Conditional Approval. The Authority requests that the Board conditionally grant the exemption authority by addressing the transportation aspects of the project in advance of the environmental issues. The Authority states that its design-build contract for a 29-mile segment of the HST System, which is composed of a five-mile portion of the Line and a 24-mile portion of the Merced-to-Fresno segment, requires the Authority to give its contractor a notice to proceed with construction of the five-mile Line segment by July 12, 2014. The Authority asserts that if it cannot issue the notice to proceed by then, the five-mile segment will be removed from the contract and the Authority will need to renegotiate the price for the construction of the 24-mile segment and the price and timetable for the five-mile segment, which could result in a substantial aggregate increase in the cost of construction of the two segments. The Authority also expresses concern regarding a possible Board member vacancy after January 1, 2014, and thus asks that the requested conditional grant of authority be effective by year's end. A Board vacancy, however, would not prevent the Board from carrying out its functions.

Although the Board has sometimes made conditional grants of construction exemption authority in the past, it has not done so in several years. It has also questioned the benefits to a construction applicant given that the Board must consider the environmental effects of the construction proposal before any final approval can be given and before any construction may begin.[2] Therefore, in the absence of a showing of some unique or compelling circumstances, it is our policy to determine the transportation merits of a construction proposal based on a complete record, including the environmental record.[3]

The Authority has not presented any unique or compelling circumstances that demonstrate that a two-step decisional process is warranted. We have an independent statutory obligation to review thoroughly transactions brought before the agency for authorization under the Interstate Commerce Act. The fact that the Authority contractually agreed to notify its contractor by a certain date that construction can proceed is not a sufficient basis for the Board to carry out its independent statutory obligation in a piecemeal fashion. Moreover, no construction may begin until after the environmental review is completed and the Board issues its final decision.[4] Neither a contractual obligation nor a notice to proceed can change that fact. There is also the possibility that the Board could deny the petition for exemption notwithstanding a prior conditional grant. Accordingly, the Authority's request for a conditional grant of the requested exemption authority, subject to the completion of the environmental review process, will be denied.

Replies to the Petition for Exemption. Given that the original deadline for replies to the petition fell during the recent Federal government shutdown, during which the Board did not accept any filings,[5] we will extend the period for replies to December 24, 2013, to permit sufficient time for interested persons to prepare and file responses.[6] Such replies should address the transportation merits of the petition.

Environmental Review. Currently, the Federal Railroad Administration (FRA) and the Authority are jointly leading a project-level environmental review of the Line.[7] In August 2011, FRA and the Authority issued a Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS), an analysis of the environmental impacts and benefits of implementing the high-speed train between Fresno and Bakersfield. Public comments on the Draft EIR/EIS were due in September 2011. Thereafter, FRA and the Authority issued a Revised Draft EIR/EIS in July 2012, on which public comments were due in October 2012. Preparation of the Final EIR/EIS is underway.

In August 2013, the Board became a cooperating agency, as defined by 40 CFR 1508.5, for the preparation of the project-level EIR/EIS for the Line, as well as for the other remaining segments of the HST System. As a cooperating agency, the Board, through its Office of Environmental Analysis (OEA), will work with the Authority and FRA to fulfill its obligations under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* OEA is currently working with FRA and the Authority in the preparation of the Final EIR/EIS for the Line. The entire environmental record for the Line, including the Draft EIR/EIS, Revised Draft EIR/EIS, public comments on those draft documents, and the Final EIR/EIS will serve as the basis for OEA's recommendation to the Board regarding whether, from an environmental perspective, the Authority's construction exemption should be granted, denied, or granted with environmental conditions. Because the public comment periods on the project-level Draft EIR/EIS and Revised Draft EIR/EIS have closed, the Board is not soliciting additional comments on environmental matters in this proceeding.

By this decision, we are instituting a proceeding under 49 U.S.C. 10502(b).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A proceeding is instituted under 49 U.S.C. 10502(b).

2. Replies to the petition for exemption are due by December 24, 2013.

3. The Authority's request for a conditional construction exemption is denied.

4. This decision will be published in the **Federal Register**.

5. This decision is effective on its service date.

Decided: December 3, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey. Vice Chairman Begeman concurred with a separate expression.

Vice Chairman Begeman, concurring:

I support the Board's decision to reject the California High-Speed Rail Authority's request for a decision on the transportation aspects of the project before the environmental review of the project is completed. The Board should not approve any segment of this enormous public works project unless it first carries out a comprehensive

[2] *See Alaska R.R.—Constr. & Operation Exemption—Rail Line Between Eielson Air Force Base (N. Pole) & Fort Greely (Delta Junction), Alaska,* FD 34658 (STB served Oct. 4, 2007).

[3] *See id.*

[4] As the Board noted in its decision approving the Merced-to-Fresno segment of the HST System, there is a controversy regarding California's bond funding process. *See June Decision,* slip op. at 20 n.104. Since the Board's *June Decision,* the bond issue has continued to be litigated in state court. *See High Speed Rail Auth.* v. *All Persons Interested in re the Validity of the Authorization & Issuance of Gen. Obligation Bonds to be Issued Pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century,* Case No. 34–2013–00140689–CU–MC–GDS (Sup. Ct. Cal., Sacramento, Nov. 25, 2013).

[5] Replies were due October 16, 2013. *See* 49 CFR 1104.13(a).

[6] On November 27, 2013, Michael E. LaSalle filed a letter requesting that the Board give notice of the Authority's petition in this sub-docket to all parties of record in the main docket and provide adequate time for interested parties to reply. This decision will be published in the **Federal Register**, which will serve as public notice of this proceeding and of the extended deadline for replies to the petition.

[7] FRA and the Authority jointly began the environmental review related to the entire HST System in 2000, and in 2005 they finalized a Program EIR/EIS, a programmatic analysis on implementing the entire HST System.

analysis of the segment at issue, including its financial fitness.

Earlier this year, the Board rushed to meet the Authority's request for expedited action on the first segment of the project. Unfortunately, in order to do so and over my objections, the Board chose to ignore key components of the project's viability—its projected costs and funding. The Board reached a decision without looking at the project's financial fitness. For this and other reasons that I explained at the time, I could not fully support the Board's decision.

Today's decision acknowledges the growing controversy regarding California's bond funding process. Considerable federal taxpayers' dollars are already at stake and the recent state court decisions may very likely impact construction timing and costs.

Just as we need to consider the environmental aspects along with the transportation merits of this project before granting further approval, we should also understand its funding aspects, and then make a decision on a full record. The Authority's current petition fails to include any details about the project's finances. That void needs to be corrected before the Board acts further.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2013–29281 Filed 12–6–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Bureau of the Fiscal Service, Department of the Treasury.

ACTION: Notice of new Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury proposes to establish a new system of records entitled, ''Department of the Treasury/Bureau of the Fiscal Service .023—Do Not Pay Payment Verification Records.'' This system of records allows the Department of the Treasury/Bureau of the Fiscal Service to collect, maintain, analyze, and disclose records that will assist Federal agencies in identifying, preventing, and recovering payment error, waste, fraud and abuse within Federal spending as required by the Improper Payment Elimination and Recovery Improvement Act of 2012 (IPERIA), 31 U.S.C. 3321 note, Public Law 112–248. Information regarding the operation of this system of records and additional privacy protections (e.g., additional disclosure restrictions, active computer matching agreements, additional safeguards, etc.) can be found at *www.donotpay.treas.gov.*

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, comments must be received no later than January 8, 2014. If no comments are received, the system will become effective on January 21, 2014.

ADDRESSES: Comments may be sent by mail or electronic mail (email). Mail address: Disclosure Officer, Bureau of the Fiscal Service, 401 14th Street SW., Washington, DC 20227. Email Address: *David.Ambrose@fms.treas.gov.* Comments received will be available for inspection by appointment at the address listed above between the hours of 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

For general questions please contact: Kevin R. Jones, Executive Director, Do Not Pay Business Center, 401 14th Street SW., Washington, DC 20227, Phone: (202) 504–3516, Bureau of the Fiscal Service, Email: *Kevin.Jones@bpd.treas.gov*.

For privacy issues please contact: David Ambrose, Acting Chief Privacy Officer, Bureau of the Fiscal Service, 3700 East-West Highway, Room 803–A, Hyattsville, MD 20782, Phone: (202) 874–6488, Email: *David.Ambrose@fms.treas.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Federal agencies make more than $2 trillion in payments for contracts, grants, loans, benefits, and other congressionally-authorized purposes to individuals and a variety of other entities each year. Most of these payments are proper. However, improper payments occur when (a) funds go to the wrong recipient; (b) the recipient receives the incorrect amount of funds; (c) documentation is not available to support a payment; or (d) the recipient receives the funds in an improper or fraudulent manner.

In accordance with the Improper Payment Elimination and Recovery Improvement Act of 2012 (IPERIA), the Office of Management and Budget (OMB) designated the Department of the Treasury to host the Do Not Pay Working System, also known as the Treasury Working System, which will help Federal agencies verify that their payments are proper before a payment is made. The Do Not Pay Working System will provide authorized Federal agencies with centralized access to various data sources, as well as access to analytical services designed to detect fraud and systemic improper payments. Treasury's Do Not Pay Working System also can help agencies identify why improper payments are made, so that agencies can take action to avoid future improper payments. By strengthening and enhancing financial management controls, Federal agencies can better detect and prevent improper payments and bolster taxpayer confidence in the Federal Government's management of taxpayer dollars.

Under current practices, Federal agencies use information from multiple data sources to verify eligibility of a benefit recipient, loan applicant, contractor, grantee, or other recipient of Federal payments at various times during the payment cycle, most significantly pre-award and pre-payment. Examples of data sources include the Department of Health and Human Services' List of Excluded Individuals/Entities, which contains information about individuals excluded from participation in Federal healthcare programs, such as Medicare, and the General Services Administration's System for Award Management (formerly the Excluded Parties List System), which contains information about contractors who are barred from doing business with the Federal Government. Typically, agencies do not solely rely on information contained in a single data source to make eligibility determinations, but use the data to confirm or supplement information received from the payment recipient and through other means. By centralizing access to multiple relevant data sources, Treasury is able to provide agencies with information to help them make better and timelier eligibility decisions.

The Do Not Pay Working System provides authorized agencies with information about intended and actual payees of Federal funds in two ways. First, the Do Not Pay Working System enables authorized Federal agencies to access information from multiple databases through a central web portal maintained by Treasury. Second, Treasury compares information about payees from payment files submitted by Federal paying agencies to information contained in multiple data sources. For both methods, the paying agency reviews any data provided by the Do Not Pay Working System to determine whether the data are correct and how the data impacts payment eligibility in

accordance with program-specific eligibility rules and procedures. In addition, Treasury provides data analysis that helps agencies detect fraud and improve internal controls to systemically prevent, identify, and recover improper payments. Only authorized Federal agency personnel with appropriate security credentials may access the data available through the Do Not Pay Working System.

Some of the data made available through the Do Not Pay Working System is subject to the Privacy Act of 1974. OMB Memorandum M–13–20 (Protecting Privacy while Reducing Improper Payments with the Do Not Pay Initiative), which implemented section 5 of IPERIA, made it clear that Treasury is authorized to establish a system of records to carry out activities described in the statute.

As required by 5 U.S.C. 552a(r) of the Privacy Act, the report of a new system of records has been provided to the House of Representatives Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and OMB.

The proposed new system of records, entitled ''Bureau of the Fiscal Service .023 Do Not Pay Payment Verification Records'' is published in its entirety below.

II. Public Disclosure

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: December 4, 2013.

Helen Goff Foster,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

TREASURY/Fiscal Service .023

SYSTEM NAME:

Do Not Pay Payment Verification Records—Department of the Treasury/Bureau of the Fiscal Service.

SYSTEM LOCATION:

Records are maintained at the Bureau of the Fiscal Service, United States Department of the Treasury, Washington, DC 20227. Records are also located throughout the United States at Fiscal Service operations centers, Federal Records Centers, Federal Reserve Banks acting as Treasury's fiscal agents, and financial institutions acting as Treasury's financial agents. The specific address for each of the aforementioned locations may be obtained upon request.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who have applied for or are receiving payments (including contract, grant, benefit or loan payments) disbursed by any Federal agency, its agents or contractors;

(b) Individuals declared ineligible to participate in Federal procurement programs or to receive certain Federal loans, assistance, and/or benefits as a result of an exclusion or disqualification action;

(c) Individuals declared ineligible to participate in Federal health care programs or to receive Federal assistance and/or benefits as a result of an exclusion action;

(d) Individuals who are barred from entering the United States;

(e) Individuals in bankruptcy proceedings or individuals who have declared bankruptcy;

(f) Individuals who are, or have been, incarcerated and/or imprisoned;

(g) Individuals who are in default or delinquent status on loans, judgment debt, or rural development and farm services programs provided through Federal agencies responsible for administering Federally-funded programs;

(h) Individuals who owe non-tax debts to the United States;

(i) Individuals who owe debts to states, where the state has submitted the debt to the Bureau of the Fiscal Service for offset; and

(j) Individuals conducting, or attempting to conduct, transactions at or through a financial institution where the financial institution has identified, knows, suspects, or has reason to suspect that: (1) The transaction involves funds originating from illegal activities; (2) the purpose of the transaction is to hide or disguise funds or assets, or attempt to hide or disguise funds or assets, originating from illegal activities as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under Federal law; or (3) the transaction is illegal in nature or is not the type of transaction in which the particular individual would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in this system contain information that will assist Federal agencies to identify and prevent payment error, waste, fraud, and abuse within Federal spending. The records contain information about intended or actual payees or recipients of Federal payments, including information about financial assets, including income, wages, and bank accounts into which payments are made, and other information to assist Federal agencies in making eligibility determinations regarding applicants for and recipients of payments from the Federal Government.

The records may contain the following information:

(a) Name(s), including aliases and surnames;

(b) State and Federal Taxpayer Identification Number (TIN), Social Security Number (SSN), Employer Identification Number (EIN), Individual Taxpayer Identification Number (ITIN), Taxpayer Identification Number for Pending U.S. Adoptions (ATIN), and Preparer Taxpayer Identification Number (PTIN));

(c) Date of birth;

(d) Home and work address;

(e) Driver's license information and other information about licenses issued to an individual by a governmental entity;

(f) Home, work, and mobile telephone numbers;

(g) Personal and Work email addresses;

(h) Income;

(i) Employer information;

(j) Assets and bank account information, including account number and financial institution routing and transit number;

(k) Other types of accounts to which payments are made, including account numbers and identifiers (e.g., financial institution routing number, account number, credit card number, and information related to pre-paid debit cards);

(l) Tracking numbers used to locate payment information;

(m) Loan information, such as borrower identification (ID) number and ID type, case number, agency code, and type code;

(n) Incarceration information, such as inmate status code, date of conviction, date of confinement, and release date;

(o) Information about legal judgments;

(p) Data Universal Numbering System (DUNS) numbers;

(q) Information about non-tax debts owed to the United States; and

(r) Information about debts owed to state agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Improper Payments Elimination and Recovery Improvement Act of 2012, 31 U.S.C. 3321 note, Public Law 112–248; The Improper Payments Elimination and Recovery Act of 2010, Public Law 111–204; E.O. 13520 (Reducing Improper Payments and Eliminating Waste in Federal Programs), 74 FR 62201; OMB Memorandum M–13–20 (Protecting Privacy while Reducing Improper Payments with the Do Not Pay Initiative); Presidential Memorandum on Enhancing Payment Accuracy through a ''Do Not Pay List'' (June 18, 2010).

PURPOSE(S):

This system of records will assist Federal agencies in verifying that individuals are eligible to receive Federal payments by allowing the Department of the Treasury/Bureau of the Fiscal Service to collect, maintain, analyze, and disclose records that will assist Federal agencies in identifying, preventing, and recovering payment error, waste, fraud, and abuse within Federal spending, as required by IPERIA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system contains records that are collected by the Bureau of the Fiscal Service and other Federal agencies. The routine uses for this system of records are listed below. Federal law may further limit how records may be used, and the Bureau of the Fiscal Service may agree to additional limits on disclosure for some data through a written agreement with the entity that supplied the information. As such, the routine uses detailed below may not apply to every data set in the system. To identify which routine uses apply to specific data sets, visit *www.donotpay.treas.gov.*

(a) Disclosure to (1) a Federal agency, its employees, agents (including contractors of its agents) or contractors; or (2) a fiscal or financial agent designated by the Bureau of the Fiscal Service, its predecessors, or other Department of the Treasury bureau or office, including employees, agents or contractors of such agent; or (3) a Bureau of the Fiscal Service contractor, for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds;

(b) Disclosure to a congressional office in response to an inquiry from the individual to whom the record or information pertains;

(c) Disclosure to (1) a Federal agency, its employees, agents (including contractors of its agents) or contractors; or (2) a fiscal or financial agent designated by the Bureau of the Fiscal Service, its predecessors, or other Department of the Treasury bureau or office, including employees, agents or contractors of such agent; or (3) a Bureau of the Fiscal Service contractor, to initiate an investigation, or during the course of an investigation, and to the extent necessary, obtain information supporting an investigation pertinent to the elimination of systemic fraud, waste, and abuse within Federal programs;

(d) Disclosure to (1) a Federal agency, its employees, agents (including contractors of its agents) or contractors; or (2) a fiscal or financial agent designated by the Bureau of the Fiscal Service, its predecessors, or other Department of the Treasury bureau or office, including employees, agents or contractors of such agent; or (3) a Bureau of the Fiscal Service contractor for the purpose of validating eligibility for an award through a Federal program;

(e) Disclosure to (1) a Federal agency, its employees, agents (including contractors of its agents) or contractors; or (2) a fiscal or financial agent designated by the Bureau of the Fiscal Service, its predecessors, or other Department of the Treasury bureau or office, including employees, agents or contractors of such agent; or (3) a Bureau of the Fiscal Service contractor to check or improve the quality and accuracy of system records;

(f) Disclosure to financial institutions and their servicers in order (1) to verify the proper routing and delivery of any Federal payment; (2) to verify the identity of any recipient or intended recipient of a Federal payment; or (3) to investigate or pursue recovery of any improper payment;

(g) Disclosure to appropriate Federal agencies responsible for investigating or prosecuting violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a possible violation of civil or criminal law or regulation;

(h) Disclosure to a Federal agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant or necessary to the requesting agency's hiring or retention of an individual or issuance of a security clearance, license, contract, grant, or other benefit;

(i) Disclosure to a court, magistrate, mediator, or administrative tribunal in the course of presenting evidence to counsel, experts, or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(j) Disclosure to appropriate agencies, entities, and persons when (1) the Department of the Treasury suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The electronic records are stored on magnetic disc, tape, and electronic media.

RETRIEVABILITY:

Records may be retrieved by identifiers, including, but not limited to, exact name, partial name, SSN, TIN, EIN, DUNS numbers, or a combination of these elements.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act. Access to the Treasury's working system is available only by authorized individuals on a need-to-know basis. External access logs to Treasury's working system are reviewed to ensure compliance with rules of behavior agreed to by credentialed users. Internal access log control measures are reviewed to ensure compliance with security guidelines governing access to Privacy Act data. Audit logs allow system managers to monitor external and internal user actions and address any misuse or violation of access privileges. Access to computerized records is limited through the use of internal mechanisms available to only those whose official duties require access. Facilities where records are physically located are

secured by various means, such as security guards, locked doors with key entry, and equipment requiring a physical token to gain access. The Bureau of the Fiscal Service may agree to additional safeguards for some data through a written agreement with the entity supplying the data. Information on additional safeguards can be found at *www.donotpay.treas.gov.*

RETENTION AND DISPOSAL:

Records in this system created or collected by the Bureau of the Fiscal Service are governed by a NARA records schedule, and are generally retained for a maximum of seven years after the end of the fiscal year in which the record was created. Pursuant to Section 7(b) of OMB Memorandum 13–20, the Bureau of the Fiscal Service will retain and dispose of records supplied by other Federal agencies in accordance with our written agreements with those agencies. Information on additional retention and disposal requirements can be found at *www.donotpay.treas.gov.*

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Do Not Pay Business Center, Bureau of the Fiscal Service, 401 14th Street SW., Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974, as amended, should be addressed to the Disclosure Officer, Bureau of the Fiscal Service, 401 14th Street SW., Washington, DC 20227. Individuals should describe the information they seek as specifically as possible. If an individual requests that information in a record be corrected, the system manager will advise the requestor where to send the request. Ordinarily, data errors must be corrected by the entity that supplied the data to Treasury's working system. Treasury will follow procedures for the accuracy and correction of information in the system that are described in OMB Memorandum M–13–20, available at *http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-20.pdf.* Information concerning Privacy Act requests are published at 31 CFR Part 1, Subpart C, and Appendix G. The Bureau of the Fiscal Service may agree to additional notification procedures for some data through a written agreement with the supplying entity. Information on additional notification procedures can be found at *www.donotpay.treas.gov.*

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual (or an authorized representative) to whom the record pertains, Federal agencies that authorize payments or issue payments with Federal funds, Treasury fiscal and financial agents who work with data in this system, and commercial database vendors. The system may contain information about an individual from more than one source, and this information may vary, depending on the source that provided it.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2013–29345 Filed 12–6–13; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Rural Health Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Veterans' Rural Health Advisory Committee will hold a meeting on January 14–15, 2014, in Room 1G12, Building 1, at the George E. Whalen VA Medical Center (VAMC), 500 Foothill Drive, Salt Lake City, Utah, from 9 a.m. to 5 p.m. on January 14, and from 9 a.m. to 5 p.m. on January 15. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on health care issues affecting enrolled Veterans residing in rural areas. The Committee examines programs and policies that impact the provision of VA health care to enrolled Veterans residing in rural areas, and discusses ways to improve and enhance VA services for these Veterans.

On the morning of January 14, the Committee will hear from its Chairman, the VAMC Director, and the Director of the Veterans Health Administration (VHA) Office of Rural Health (ORH). The Committee will hear a presentation on the Women's Health Program, witness a Telehealth demonstration, and tour Native Healing Grounds.

In the afternoon, the Committee will receive an overview of the VHA Veterans Transportation Program and a demonstration of the State of Utah's Veterans Database. At 6 p.m., the Committee will hold a Rural Veterans Forum at the Central Utah Veterans' Home, 1865 North Main, Payson, Utah.

On January 15, the Committee will hear opening remarks from its Chairman; discuss its meeting; and conduct a workgroup session on the Committee's annual report. Public comments will be received at 4:30 p.m.

Individuals scheduled to speak are invited to submit a 1–2 page summary of their comments for inclusion in the official meeting record. Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Therefore, you should allow an additional 15 minutes before the meeting begins.

Members of the public may also submit written statements for the Committee's review to Ms. Judy Bowie, Designated Federal Officer, ORH (10P1R), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or email at *rural.health.inquiry@va.gov.* Any member of the public seeking additional information should contact Ms. Bowie at (202) 461–1929.

Dated: December 4, 2013.

Jeffrey M. Martin,

Program Manager, Regulation Policy and Management, Office of the General Counsel.

[FR Doc. 2013–29301 Filed 12–6–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 78 Monday,

No. 236 December 9, 2013

Part II

Department of Agriculture

Rural Housing Service
Rural Business-Cooperative Service
Rural Utilities Service
Farm Service Agency

7 CFR Parts 1980 and 3555
Single Family Housing Guaranteed Loan Program; Interim Final Rule

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1980

Rural Housing Service

7 CFR Part 3555

RIN 0575–AC18

Single Family Housing Guaranteed Loan Program

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Interim final rule.

SUMMARY: The Rural Housing Service (RHS) is streamlining and reengineering its Single Family Housing Guaranteed Loan Program (SFHGLP) regulation. This action is taken to reduce regulations, improve customer service, achieve greater efficiency, flexibility, and effectiveness in managing the program. The effect of this action is to provide better service to participating lenders and investors by removing Rural Development internal administrative procedures and make the necessary adjustments to reduce SFHGLP risk of loss.

DATES: *Effective date:* September 1, 2014.

Comment date: Written comments on the interim final rule must be received on or before January 8, 2014.

ADDRESSES: You may submit comments on this interim final rule by any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments electronically.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express mail, or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Debra Terrell, Senior Loan Specialist, Single Family Housing Guaranteed Loan Division, Stop 0784, Room 2250, USDA Rural Development, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–0784, telephone (202) 720–1452 or (918) 331–9404, email is *debra.terrell@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866—Classification

This final rule has been reviewed under Executive Order (EO) 12866 and has been determined to be significant by the Office of Management and Budget. The EO defines a ''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 this EO.

The Agency conducted a regulatory impact analysis to fulfill the requirements of EO 12866. In this analysis, the Agency identifies potential benefits and costs of continued homeownership assistance in rural areas. Revising the regulation and creating handbook materials to further detail procedures should lead to improved performance, both by lenders and Agency staff. Ambiguities in program requirements will be eliminated and written guidance in one collective publication will be provided to help lenders and Agency representatives make sound programmatic decisions. Time savings for the Agency should result in a more efficient streamlined delivery of lender guarantee requests and reduced administrative costs to the Agency. Cost savings will be continuous each year and can be measured in terms of Agency staff time, equipment and associated costs. Workload efficiency is also expected to increase by delegating servicer authority to qualified lenders. The regulatory impact analysis estimates the Agency can save over $14,000 in each dedicated staff time by streamlining the procedures and $393,000 in staff time for each servicing lender that is delegated authority to approve loss mitigation and property disposition plans. In addition, by revising the requirements for interest on Real Estate Owned properties to allow for property disposition within 90 days of acquisition will save the federal government an estimated $9.6 million annually.

The analysis also discusses the benefits of changes like the new single close loan feature. The new process will eliminate the need for an interim loan, which will promote new construction in rural areas. Adjustments to qualifications for eligible lenders should also allow more program participation in underserved rural areas.

Other federal assistance is concentrated in urban areas. The disparity between metropolitan homeowners who have financed with federal programs compared to non-metropolitan rural homeowners indicates the guaranteed program has a positive impact in increasing the level of federal assistance available to low- and moderate-income rural households interested in pursuing homeownership. The impacts of changes to the rule are positive to the federal budget, local economic impact and housing market. Changes are intended to streamline the program, reduce regulations, improve customer service and strengthen the Agency's ability to achieve greater efficiency, flexibility and effectiveness in managing the program. None of the proposed changes is expected to have a significant economic impact on lenders, borrowers, or the U.S. Treasury. The monetary impact of this rule is based on the overall program costs. The estimated overall program costs burden is $2,200 for applicants/borrowers, and $125,000 for lender entities. The administrative cost to the Agency for implementation of the rule is approximately $250,000.

Executive Order 12788—Civil Justice Reform

This final rule has been reviewed under Executive Order 12788, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the Department of Agriculture National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under

this rule unless those regulations specifically allow bringing suit at an earlier date.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1996 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of this rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(c)), the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of Rural Development that this action is categorically excluded from NEPA documentation requirements consistent with 7 CFR 1940.310 for financial assistance for the purchase of an existing dwelling. An existing property purchase does not impose a significant effect on human environment. Therefore neither an Environmental Assessment nor an Environmental Impact Statement is required for this rule.

Executive Order 13132—Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on States and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612) the undersigned has determined that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not impose any significant new requirements on Agency applicants, borrowers or lenders and the regulatory changes affect only Agency determination of program benefits for guarantees on loans made to individuals.

Executive Order 12372—Intergovernmental Consultation

This program/activity is excluded from the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, the rule is not subject to the requirements of Executive Order 13175. Tribal Consultation inquiries and comments should be directed to Rural Development's Native American Coordinator at *aian@wdc.usda.gov* or (720) 544–2911.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under 10.410, Very low- to Moderate-Income Housing Loans.

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been submitted to the Office of Management and Budget (OMB) for review and approval.

E-Government Act Compliance

The Rural Housing Service is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Background

On December 15, 1999, RHS published a proposed rule with request for comments for the Single Family Housing Guaranteed Loan Program (SFHGLP) (64 FR 70123–70144). Rural Development received comments from sixty-three respondents. Comments were from Agency employees or employee groups, lenders, secondary market sources, builders, and various other interest groups.

The 180 day effective date of this rule will allow Rural Development the opportunity to provide training to participating lenders and allow time for computer system changes. Rural Development recognizes the general need to make the program more ''user-friendly'' and more compatible with existing mortgage lending practices. Many of the comments received addressed these issues.

With this rule, Rural Development is attempting to meld the better features of conventional loan programs and other Government loan programs to make the SFHGLP as easy for lenders to use as possible. Rural Development believes that loan product which is easier for lenders to use will help in increasing the number of rural families served by the program. This approach is supported by Section 706(d) of the Cranston-Gonzales National Affordable Housing Act (Pub. L. 101–625), which provided in developing the guaranteed loan regulations. Rural Development must ensure that guaranteed loans:

- Are made in a manner that is cost-effective; and
- Reduce, to the extent practicable, the burden of administration and paperwork for borrowers and lenders.

In the past, SFHGLP regulations and instructions have been the same. Lenders participating in the program have criticized this approach as not meeting their needs. This regulation omits the detailed internal agency administrative instructions used to administer the program. Several commenters welcomed the change in the regulatory process.

The Agency will continue to publish all substantive policy that provides a benefit, imposes an obligation on the public, establishes eligibility criteria, or information necessary for members of the public to understand their responsibilities. Rural Development will continue to improve the clarity of the regulations and attempt to meet the needs of the program participants and general public. Any substantive changes in the regulation will continue to be

published in the **Federal Register** and each Agency field office will have a copy of the administrative instruction (a handbook).

The handbook will be available on the Internet at *http://www.rurdev.usda.gov/Handbooks.html* and a copy can be obtained by sending a written request to: Rural Development, Stop 0784, Room 2250, South Agriculture Building, USDA, 1400 Independence Avenue SW., Washington, DC 20250–0784.

One respondent suggested the public have an opportunity to comment on the handbook. The Proposed Rule provided that the handbook will be available for public comment with regard only to its information collection requirements. The handbook is internal guidance and, therefore, not subject to comment.

Other respondents focused on the lack of detailed administrative instructions. Detailed administrative guidance has been removed from the regulation and is provided in the program handbook.

Several respondents noted that requiring compliance with Year 2000 (Y2K) requirements is dated and suggested removal from the regulations. Rural Development concurs and has removed this requirement.

Specific public comments and substantive changes from the proposed rule are addressed below in general order of appearance in the regulation, not based on order of importance.

Purpose (§ 3555.2)

One respondent suggested removal of the reference to ''persons who do not own adequate housing'' since the rule also provides that current homeowners may obtain loans through the Single Family Housing Guaranteed Loan Program (SFHGLP). The Agency agrees that current homeowners may obtain a SFHGLP loan in certain situations, for example, to make needed repairs to the dwelling. This suggestion is adopted and the reference is removed.

A provision has been added to specifically permit limited demonstration programs as allowed by law. The objective of these demonstration programs will be to test new approaches to financing housing under the statutory authority granted to the Secretary of Agriculture (hereafter referred as the Secretary). This provision is similar to other Rural Development programs, such as the Section 502 Direct Program, found at § 3550.7.

Mediation and Appeals (§ 3555.4)

One respondent suggested eliminating mediation and Alternative Dispute Resolution (ADR) stating that neither process works well with the SFHGLP. Rural Development must comply with statutory requirements in 7 U.S.C. 6995 and the National Appeals Division regulation, 7 CFR 11.5, granting participants the right to use available ADR or mediation programs to resolve adverse decisions by the Agency. No change is made in this provision.

Environmental Requirements (§ 3555.5)

Lenders must comply with all State and local laws and regulations under 7 CFR 3555.6. The proposed rule stated that Rural Development will take into account potential environmental impacts of proposed projects by working with applicants, other Federal agencies, American Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program's goals in a manner that will protect environmental quality. The SFHGLP does not have any provision for working on proposed housing projects. The program guarantees loans made by private lenders to purchase, build, or repair a home. The private lender may be involved in proposed housing projects, however, and would be responsible for compliance with all applicable environmental quality requirements.

Several respondents expressed concern regarding environmental requirements relative to flood insurance. Two respondents were in favor of providing financing in Special Flood Hazard Areas (SFHAs); one stated that there is no risk to Rural Development or lender when proper flood insurance is obtained and one stated that flood insurance should not be required if the site is located in a SFHA but not the dwelling. Four respondents recommended that loans be prohibited if the subject site is located in a SFHA. The National Flood Insurance Act of 1968, specifically, 42 U.S.C. 4012, prohibits Agency-assisted financing of dwellings on a site identified as located in a SFHA when flood insurance is available but has not been obtained on the building and/or personal property associated with the assistance. Rural Development will guarantee loans for existing homes in an SFHA provided the borrower obtains flood insurance at, or prior to, loan closing and maintains flood insurance for the life of the loan. The lender must be listed as a loss payee. Rural Development may guarantee loans for new or proposed homes in an SFHA, even with flood insurance, except under limited circumstances, such as when Federal Emergency Management Agency (FEMA) has issued a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) or if the lender obtains a FEMA National Flood Insurance Elevation Certification indicating the lowest habitable floor (including the basement) of the residential building and all related improvements/equipment are built at or above the 100-year flood elevation. The proposed rule did not contain any provisions for such situations. This change is made to achieve consistency with other Federally insured or guaranteed single-family mortgage programs like those offered by the Department of Housing and Urban Development (HUD) and Veterans Affairs (VA).

Enforcement (§ 3555.9)

Language has been added concerning the possible assessment of civil monetary penalties. This penalty is authorized by section 543 of the Housing Act of 1949 (42 U.S.C. 1490s) and 7 CFR 3.91. The Agency does not have a notice and hearing process, as required by the authorizing statute, for the imposition of civil monetary penalties, but the authority has been noted in the rule for future use.

Definitions (§ 3555.10)

One respondent stated the term ''acceleration'' is not a conventional lending term. The term is used in the mortgage lending business, and no change is made in the definition or term.

The term ''amortization'' was added to describe the gradual reduction of the mortgage debt over the term of the loan.

The term ''Area Median Income'' was added for clarity to describe the median income in a specific location, as determined by the HUD in order to determine borrow eligibility. This term is used in section 502(h)(3) of the Housing Act of 1949 (42 U.S.C. 1472(h)(3)).

The term ''condominium project'' was added for clarity to describe a particular form of construction development.

The term ''combination construction and permanent loan'' was added based on a respondent's comments on 7 CFR 3555.101. More fully explained in (§ 3555.101) of the preamble, a ''combination construction and permanent loan'' is a guaranteed loan on which the Rural Development guarantee becomes effective at the time construction of an eligible single family housing project begins.

The term ''dealer-contractor'' was removed since Rural Development will no longer review and approve or disapprove manufactured housing dealer-contractors under the SFHGLP.

The term ''escrow account'' was revised to clarify a common mortgage

industry term for the trust account typically established by lenders to hold funds collected from a borrower in order to pay real estate taxes, insurance premiums, and other similar expenses as they come due.

There were several comments on the definitions for ''existing dwelling'' and ''new dwelling.'' These definitions are used in determining property eligibility, inspection, and home warranty requirements. One respondent suggested adding wording that if the dwelling is less than one year old and has been occupied, then it is an existing dwelling. One respondent suggested the wording might be incorrect as it relates to the requirement for the new home warranty. Some respondents suggested alternative wording to the definition of ''new dwelling.'' One respondent suggested adding ''less than one-year old and never occupied.'' One respondent suggested permitting financing of spec-built dwellings without interim construction inspections and without a 10 year, new home warranty if the construction standards exceed the national building code. When the dwelling is less than one year old and has never been occupied, then it is a new dwelling and a new home warranty must be in place. Rural Development agrees that if the dwelling has been occupied, regardless of its age, then it is an existing dwelling, and a new home warranty is not required. The regulation and handbook have been clarified accordingly in response to the comments.

One respondent suggested that the definition for a ''first-time homebuyer'' should be broadened to include a divorced individual who does not have children, arguing that in most divorces, the wife gets the home if she desires, and can thus argue for custody of the children because the husband does not own a home. The Housing Act of 1949, as amended, provides a definition for a first-time homebuyer. As written in this rule, the definition of first-time homebuyer closely follows the definition in the statute; therefore, no change is made. The Agency notes that the situation provided may fall within this definition depending on other factors, such as if the divorced individual was a homemaker.

The term ''Fannie Mae'' was added, which is synonymous with the Federal National Mortgage Association.

The term ''FHLB'' was added as the acronym for the Federal Home Loan Bank.

The term ''Freddie Mac'' was added, which is synonymous with the Federal Home Loan Mortgage Corporation.

The term ''Ginnie Mae'' was added, which is synonymous with the Government National Mortgage Association.

The term ''loan modification'' was added to describe changes to promissory note characteristics such as the interest rate, loan term, and monthly payments.

The term ''manufactured home'' was changed to more succinctly describe structures built on a permanent chassis according to Federally Manufactured Home Construction and Safety Standards established by HUD and found at 24 CFR part 3280.

The term ''moderate income'' was amended to include a 2000 statutory change (Pub. L. 106–387, section 751) providing that anyone who does not meet the greater of 115 percent of the U.S. median family income, the average of the state-wide and state non-metro median family income, or 115/80ths of the area low-income adjusted for household size for the county or MSA where the property is, or will be located meets the income eligibility criterion of 42 U.S.C. 1472(h)(2). The definition is consistent with the Agency's current income policy.

One respondent suggested that the reference to Rural Development's thermal performance standards be deleted from the definition for manufactured home. Rural Development agrees that a change to this requirement is needed to be consistent with manufactured housing industry standards and is in the best interest of the program. A change, therefore, is made to this definition to adopt the thermal standard (and other home construction and safety standards) for manufactured housing established by the HUD. These HUD standards can be found at 24 CFR part 3280 or on the Internet at *http://www.hud.gov/library/index.cfm.*

Several respondents commented on the definition of ''modest housing.'' Some suggested removing the reference to section 203(b) of the National Housing Act. Several suggested removal of the reference to in-ground swimming pools as it is not listed as a restriction in 7 CFR 3555.102. Rural Development concurs that, because a SFHGLP loan applicant's household adjusted income must not exceed the moderate-income limit for the area, the applicant's repayment ability is the determining factor in ensuring that the modest housing requirements in section 517 of the Housing Act of 1949 are met. This guaranteed loan standard for ''modest housing'' is different from the Section 502 Direct Loan program which generally defines modest housing as having a market value which does not exceed the applicable area loan and must not have prohibited features. (See 7 CFR 3550.10). For Section 502 Direct loans, the applicable area loan limits are established by each Rural Development State Office, but will not exceed the local HUD 203(b) limit in effect. This difference between the SFHGLP and the Section 502 Direct Loan program is acceptable because of the difference between the programs' income limits. Applicants for the Section 502 Direct Loan program must have very low or low incomes; a SFHGLP loan applicant's household adjusted income must not exceed the applicable moderate-income limit as defined at 7 CFR 3555.10 of this rule. For SFHGLP purposes, the definition of ''modest housing'' will be the housing that a low- or moderate-income borrower can afford based on their repayment ability.

The low- or moderate-income applicant's repayment ability will be the determining factor in ensuring that the modest housing requirements in section 517 of the Housing Act of 1949 are met. The reference to section 203(b) of the National Housing Act is removed from the regulation. This is permissible since eligible housing for the SFHGLP need not be eligible under that statute according to section 502(h)(4)(B) of the Housing Act of 1949.

The term ''mortgage credit certificate'' was amended to fully describe a Federal tax credit which reduces a borrower's Federal income tax liability and improves his or her repayment ability.

The term ''MSA (Metropolitan Statistical Area)'' was added as it is a term the Office of Management and Budget has prescribed for use by Federal agencies to collect, tabulate, and publish Federal statistics.

The term ''new dwelling'' was amended to achieve consistency with other Agency program regulations and to better conform to widely accepted mortgage industry standards. A dwelling that has been completed for more than one year and that has never been occupied is considered an existing home.

The term ''pre-foreclosure sale'' was added to describe a loss mitigation technique which reduces the cost of liquidating a property the lender is considering for a foreclosure.

The term ''primary residence'' was added, which is synonymous with the term ''principal residence.''

The term ''principal residence'' was added as it is the language included in the Housing Act of 1949, as amended, to describe eligible housing. For the property to be eligible, it must be a single family dwelling, must be modest, located in a rural area, and be used by

the borrower as their principal residence.

The term ''qualified alien'' was amended to achieve a more complete description consistent with Section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) at 8 U.S.C. 1641, which describes the class of non-U.S. citizens who are eligible for Federal assistance in the form of a loan, grant, or guarantee.

Two comments were received on the definition for ''rural area.'' Both respondents suggested expanding the population base arguing that doing so would make the program more competitive and reduce lender confusion. These comments are beyond the scope of this regulation as section 520 of the Housing Act of 1949 defines the term. The Agency has no authority for expanding the population base for Single Family Housing programs as suggested. The definition in this rule has been updated to refer to section 520 of the Housing Act, as amended.

The term ''settlement date'' was added to clarify when additional interest on an unsatisfied principal balance begins to accrue for loss claim payment purposes under 7 CFR 3555.352. The definition takes into account certain state-required redemption or confirmation periods, as well as general industry standards and loss mitigation techniques. Therefore, the settlement date, for the purpose of calculating a loss payment, is the later of the actual foreclosure date, the closing date if the property sold to a third party at the foreclosure sale, the date the borrower with lender concurrence sold the property to a third party in order to avoid or cure a default situation, and when title is acquired to the security following the expiration of any state-required redemption or confirmation period.

The term ''short sale'' was added to describe a loss mitigation technique which reduces the cost of liquidating a property the lender is considering for a foreclosure.

The term ''SFHGLP'' was added as the acronym for the Single Family Housing Guaranteed Loan Program of USDA, Rural Development that is authorized under section 502 of the Housing Act of 1949, as amended.

The term ''U.S. non-citizen national'' was added to be consistent with Section 341(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1452(b)(2) to describe a class of applicants who may be considered eligible for Federal assistance in the form of a loan, grant, or guarantee.

The following terms are introduced in § 3555.10 as a result of the addition of a new section § 3555.304 regarding special servicing options ''Extended-term loan modification,'' ''Maximum allowable interest rate,'' ''Mortgage payment to income ratio,'' ''Mortgage recovery advance,'' and ''Total debt to income ratio.''

Lender Eligibility (§ 3555.51)

Several respondents expressed interest in this section. Some expressed concern regarding the lender eligibility requirement to underwrite and service single family housing loans and questioned whether lenders presently approved and not meeting these conditions will be permitted to continue as approved lenders. Lenders who no longer meet the requirements, however, will cease to be eligible to participate, as has been the case in the past under 7 CFR 1980.309(h). Since categories of eligible lenders are being expanded, however, eligible lenders should increase not decrease. The same respondents indicated the requirements of meeting HUD's direct endorsement authority as a supervised or non-supervised mortgagee are too strict, citing that some rural lenders would not meet the net worth requirements. The conditions outlined for lender approval are the same as currently in place, but with some modification to expand eligibility while maintaining the integrity of the program. The requirements have been expanded to include as eligible those lenders supervised by Federal regulatory entities, or which are Government sponsored enterprises. Acceptable Federal supervisory entities which have been added for eligibility purposes include the Federal Deposit Insurance Corporation, the Federal Reserve System, the National Credit Union Administration, the Office of Thrift Supervision, the Office of the Comptroller of the Currency, and the Federal Housing Finance Board. The latter regulates banks within the Federal Home Loan Bank (FHLB) System. These Federal entities supervise their lenders, impose capital and net worth requirements, and periodically conduct audits and examinations of the lenders for the purposes of safety, soundness, and compliance with their Federal requirements. Rural Development believes these requirements will protect the integrity of the program and promote loan quality. The final rule is amended accordingly.

One respondent noted the proposed rule omitted default and status reporting from the regulations. 7 CFR 3555.51 (b)(8) requires the lender to cooperate with Agency reporting requirements. This reference includes both monthly default and quarterly status reporting, etc. as specified in the Agency handbook. The handbook guidance uses the industry standard for investor and guarantor reporting requirements. Specifically, investor and guarantor reporting are now done through an Electronic Data Interchange (EDI) or other electronic methods. The lender's agreement also provides for reporting requirements as needed to monitor lender performance. As a related issue, the Agency has noticed that not all sales, transfers, or change of servicers are reported to the Agency in a timely manner. The Agency is not able to track the performance and status of the Guaranteed portfolio unless lenders report all sales, transfers or changes in servicers; hence, the language in 7 CFR 3555.51(b)(10) has been changed to specifically list these existing requirements.

Other respondents were concerned about Rural Development requiring a fidelity and omissions policy listing Rural Development as loss payee. Rural Development has reviewed this proposal and determined that it is not consistent with the mortgage industry and agrees to remove. To be eligible, the lender must have a demonstrated ability to underwrite and service single-family loans and must meet standards established by a Government Sponsored Enterprise (GSE) or a similar organization or Federal entity. The fidelity and omissions policy requiring Rural Development to be listed as a loss payee, therefore, is not needed to protect the Government.

One respondent recommended establishing a delinquency goal to improve and monitor a lender's servicing performance. While Rural Development agrees that the performance of the serviced portfolio is important, we believe that a delinquency goal in itself is not adequate to assess lender performance. Further guidance regarding acceptable overall lender performance and Agency monitoring procedures are addressed in the handbook. Lender participation requirements are covered in subpart B of this part. No change has been made in response to this comment.

One respondent inquired as to why Ginnie Mae was not included as an eligible entity to purchase guaranteed loans. Ginnie Mae is not a holder of loans, but acts on behalf of a holder by guaranteeing ''pools'' of securitized loans in case of default. Ginnie Mae does not purchase individual loans. Therefore, no change has been made in response to this comment.

One respondent expressed a concern regarding the amount of paperwork and materials to be submitted by the lender to Rural Development and the extent to which Rural Development reviews or underwrites the loan. Lenders currently have sole responsibility for underwriting the loan and will continue to assume this responsibility with implementation of the final rule. Rural Development, however, reviews the loan for program compliance prior to issuing a Conditional Commitment. The loan submission and review process is covered in 7 CFR 3555.107 and is detailed more extensively in the handbook.

Lender Approval (§ 3555.52)

For several years, Rural Development has required that lenders undergo an online training that is available on demand in order to become an approved lender. This requirement has been stated in the rule.

Provisions proposed describing possible suspension and debarment proceedings after termination or withdrawal of lender approval have been removed from the final rule, as unnecessary since it is covered by separate regulations, 2 CFR parts 180 and 418. This section has been clarified to state that any termination of approval will be conducted in accordance with the terms of the lender's agreement. The Agency may take any corrective action or seek any remedy authorized by law.

Loan Purposes (§ 3555.101)

Several respondents requested clarification on reasonable and customary expenses related to obtaining the loan, recommending that the regulations be more specific on allowable fees and charges. One respondent stated that they support Rural Development's objective to eliminate blatant excesses and abuse by lenders in this area, but that the dynamics of the free market economy would be the best check against excessive lender fees and charges. Rural Development supports the benefits provided to SFHGLP loan applicants due to market competition, but recognizes that the SFHGLP is different than most other programs in that the program permits long-term financing of most, if not all, closing costs charged by the lender. Not only is the SFHGLP borrower negatively affected by excessive fees and charges, Rural Development pays higher claims on defaulted loans than necessary when excessive fees and charges are financed in the mortgage loan. Rural Development, therefore, has clarified this section to state that reasonable and customary closing costs include lender fees and charges that do not exceed those charged other applicants by the lender for similar types of transactions. For many lenders, the most similar type of transaction is another housing loan with Federal insurance or guarantee. Lenders that do not participate in other government insurance or guarantee programs may use for comparison a loan program that has conventional insurance or guarantee. Lenders will ensure that their fees and charges meet these requirements and will make their records available upon request.

Other respondents suggested a change to allow discount points as a permissible loan purpose for moderate-income applicants. Discount points are paid to obtain a lower interest rate. Rural Development disagrees that moderate-income applicants should be allowed to finance the cost to ''buy down'' the interest rate. The need to obtain a lower interest rate by paying additional points is less acute for moderate-income applicants than for low-income applicants, and not paying discount points keeps financed closing costs at a lower level. The treatment of discount points remains the same as under the prior regulation. The proposed provision that allows only low-income applicants to include reasonable discount points in their loan amount therefore, remains unchanged.

Based on comments received and Rural Development's belief that homeownership education is a worthwhile expense for all homebuyers, Rural Development has elected to continue to allow the payment of homeownership education fees from loan funds. The restriction of this coverage to first-time homebuyers has been removed.

One respondent suggested adding ovens, wall-to-wall carpeting, flooring, heating and cooling equipment to 7 CFR 3555.101(b)(5) to be consistent with those purposes stated for manufactured housing. In 7 CFR 3555.101, paragraph (b) had been revised and paragraph (c) has been redesignated. The suggested items have been included in the newly revised paragraph (b)(1).

One respondent suggested a ''one-time close'' provision for combined construction to permanent loans. Rural Development has been testing such a program, agrees with the respondent, and includes a provision for combination construction and permanent financing as an acceptable loan purpose in the final rule. Conditions for such loans are listed in newly revised 7 CFR 3555.105. The criteria for a ''one-time close'' provision reflect those that have been successfully tested by Rural Development and are substantially similar to comparable ''one-time close'' programs already prevalent in the mortgage industry today. The following limitations reduce the risk to the Government on these projects. Lenders must have at least two years of experience making and administering construction loans and will be responsible for reviewing and approving construction contractors or builders, including due diligence such as conducting background checks, ensuring the builder has two or more years of experience in constructing single family dwellings, and that the builder possesses the appropriate licenses, insurances, etc. As is the case with similar combined construction to permanent loan programs in the mortgage industry today, lenders will finance the price of the lot as well as reasonable and customary closing costs, and loan proceeds will be escrowed and funds paid out in draws during construction. Draws clarify for the builder and borrower when and how payment will be made during the construction period. Once construction is complete, the loan will be modified and re-amortized to achieve full repayment within the loan's remaining term, not to exceed 30 years. Rural Development reserves the right to limit the number of loans guaranteed under this section based on market conditions and/or loan performance.

Some respondents suggested that the regulations should be revised to permit refinancing of existing Section 502 guaranteed and direct loans with Section 502 guaranteed loans. At the time the proposed rule was published, Rural Development did not have the statutory authority to refinance existing Section 502 direct and guaranteed loans. However, Rural Development now has the statutory authority to do so under 42 U.S.C. 1472(h)(14). The regulation is revised accordingly in § 3555.101(d) to incorporate the Agency policy on refinancing existing Section 502 direct and guaranteed loans. For these types of refinancing, the interest rate must be fixed and least 100 basis points below the original loan rate; the security must be the same property as for the original loan which still serves as the principal residence for the borrower; the borrower must have kept the account current for at least 180 days prior to application for refinance; borrowers may be deleted and qualified borrowers may be added; and the new loan amount cannot exceed the balance of the existing loan, interest, guarantee fee and reasonable closing costs. Borrowers with existing guaranteed loans may use a streamlined

option for refinancing, which does not require a new appraisal. Borrowers with existing direct loans must use the non-streamlined option and obtain a new appraisal, because direct loans are subject to recapture and the recapture calculation requires a current appraisal value. Documentation, costs and underwriting requirements of subparts D, E, and F of this part apply to refinances, unless otherwise provided by the Agency. Given housing market fluctuations, the Agency needs to be capable of reacting quickly to changing housing needs. The Agency may limit the number of guaranteed loans made for refinancing purposes based on market conditions and other appropriate factors in accordance with section 502(h)(17)(f) of the Housing Act.

One respondent recommended correcting 7 CFR 3555.101(c) (2) (iii) to read that refinancing is permitted in the case of a loan for a site without a dwelling if a dwelling ''will be'' constructed on the site. Rural Development concurs and the regulation is so clarified.

Loan Restrictions (§ 3555.102)

One respondent questioned whether the intent of 7 CFR 3555.102(b) was to require a determination whether the applicant intends to use the land or buildings for a business. The intent of the regulation is to prohibit guaranteeing loans to purchase land or buildings typically used primarily for income-producing purposes and the section has been revised for clarification.

One respondent encouraged Rural Development to establish a maximum amount for property seller financing concessions to prevent over-inflated property values. This change is adopted, and the regulations have been revised to state that the property seller, or other interested party, may contribute up to 6 percent of the property's sale price toward the purchaser's financing costs. The 6 percent provision is consistent with present HUD guidelines. This amount may change periodically based upon the performance of the portfolio, changing mortgage industry standards, and the level of exposure the Agency is willing to assume to excess risk by creating incentives which may increase the appraised value of a property.

Maximum Loan Amount (§ 3555.103)

No comments were received on this section; however, the section has been re-written to clarify that the maximum loan amount cannot exceed the lesser of the market value of the property as determined by an appraisal that meets Agency requirements plus the amount of the loan guarantee fee required by newly redesignated 7 CFR 3555.107(f), or the total of the purchase price and all eligible acquisition costs as permitted by 7 CFR 3555.101. The change was made to account for statutory authorities granted after the proposed rule was published. 42 U.S.C. 1472(h)(7)(C) includes the ability to exceed a 100 percent loan-to-value to the extent that the guarantee fee is included in the loan amount, and no longer references HUD loan limit restrictions under section 203(b) of the National Housing Act.

The proposed rule inadvertently omitted language limiting the maximum loan amount to 90 percent of the present market value for new construction when the requirements of § 3555.202(a) regarding plan certifications, inspections and warranties cannot be met. The final rule corrects this omission and contains language substantially similar to that in current regulations, 7 CFR 1980, part D.

Loan Terms (§ 3555.104)

Several comments were received on the proposal to establish a maximum interest rate allowable for the SFHGLP and the method of notification to participating lenders. Some respondents suggested letting the market set the rate while others commented that a maximum rate should be established due to limited competition in rural areas. Others were concerned that establishing the rate cap at 125 basis points over the Fannie Mae 90-day rate would be detrimental to the applicants and ultimately to Rural Development in higher default and loss rates. Most of the respondents agreed there must be flexibility in the rate and, that changes to the rate not disrupt the lender community or secondary market. After full consideration of the comments and the issues and risks involved, Rural Development agrees that the rate can be based on market competition, but that there should be a maximum interest rate to protect borrowers who may not be very experienced with mortgage financing. Permitting the lender to establish the interest rate by means of publishing a VA rate is objective, not subjective, so the proposed provision to establish the Rural Development rate was removed from the final rule. Substantially consistent with the proposed rule, the interest rate may be established based on market competition, provided the rate does not exceed the greater of:

- The current Fannie Mae posted yield for 90-day delivery (actual/actual) for 30-year fixed rate conventional loans plus 1 percent, rounded up to the nearest one-quarter of 1 percent.
- The current Freddie Mac required net yield for 90-day delivery for 30-year fixed rate conventional loans plus 1 percent, rounded up to the nearest one-quarter of 1 percent.

Previously, only mortgages with 30-year terms were permitted. Lesser loan terms may be used as Rural Development completes changes to its systems and subsidy rate models in order to accommodate loan terms of less than 30 years. Under the Housing Act of 1949, as amended, loan terms may be up to 30 years, but not greater. Updates to the interest rate limits are available in any Rural Development State Office or online at *http://www.rurdev.usda.gov/regs/regs/pdf/04401.pdf*.

Interest Assistance (§ 3555.105) and Recapture (§ 3555.106)

A suggestion was made to remove requirements from the regulation since the interest assistance program is not funded nor is funding proposed. Since there are fewer than 50 outstanding loans receiving this assistance, the suggestion was adopted and a decision was made to include these policies in the handbook to continue administering existing interest assistance obligations. 7 CFR 3555.105 has been revised and 7 CFR 3555.106 has been reserved.

Application for and Issuance of the Loan Guarantee (§ 3555.107)

Three respondents addressed concerns regarding issuance of the conditional commitment. All three recommended that in order for borrower costs to be reduced and the loan process to be efficient and streamlined, property inspections, such as a well test or construction phase inspections must be treated as conditions to loan closing. Rural Development does not intend that a borrower incur unnecessary costs prior to issuance of the conditional commitment, and has clarified the regulations to state that the lender may obtain evidence of required property inspections not needed for environmental compliance and any necessary repairs after issuance of the conditional commitment, but prior to submitting the request for the loan guarantee.

Some respondents requested clarification on the amount of the guarantee fee. By statute, the up-front guarantee fee must be based on the principal loan amount obligated. (See 502(h)(8) of the Housing Act of 1949.) If the up-front guarantee fee is included in the loan amount, the loan amount increases along with a corresponding increase to the fee. Assuming for illustration purposes that the guarantee

fee is 2 percent, the following formula applies:

loan amount ÷ 0.98 = loan amount, including guarantee fee

e.g. $100,000 ÷ 0.98 = $102,2040.82 (includes the guarantee fee)

Rural Development will provide additional comprehensive examples of how to calculate the guarantee fee in the handbook.

In addition, Rural Development added in this section that, when a shortage of funds is projected or anticipated during the fiscal year, funding will be restricted to first-time homebuyers or veterans. This is consistent with sections 502(h)(5) and 507 of the Housing Act of 1949, as amended, which gives priority to first-time homebuyers and veterans. A determination that a shortage of funds will be made if, based on current obligation rates, funds will be projected to run out before the end of the fiscal year.

Note that an annual fee is now authorized by Section 201 of Public Law 111–212, 42 U.S.C. 1472(h)(8). Under that statute, the Secretary is authorized to collect from the lender an annual fee not to exceed 0.5 percent of the outstanding principal balance of the loan for the life of the loan. The Agency published a final rule regarding the annual fee on July 11, 2012 in the **Federal Register** (77 FR 40785). The intent of the annual fee is to make the SFHGLP subsidy neutral, thus eliminating the need for taxpayer support of the program. The annual fee will be applicable to purchase and refinance loan transactions.

The paragraph on proper closing (§ 3555.107(i)) has been revised to clarify the Agency's policy in allowing ''self-certified'' lenders to submit minimal documentation to evidence a properly closed loan. To obtain ''self-certification'' authorization from the Agency, the lender must actively originate SFHGLP loans and have demonstrated consistent successful loan closings with full documents. Self-certified lenders must still submit the promissory note and settlement statement to the Agency.

Full Faith and Credit (§ 3555.108)

The proposed regulations inadvertently omitted a section explaining the ''Full faith and credit'' provisions of the Loan Note Guarantee. The final rule corrects this omission and contains language substantially similar to that in the current regulation. New language in this section introduces indemnification when a lender fails to originate a loan in accordance with the requirements in this subpart and possible action the Agency may take as a result of that determination. The proposed rule did not contain language regarding indemnification. This language is added as a result of a final rule published May 31, 2011 (76 FR 31217–31220).

Eligibility Requirements (§ 3555.151)

Three respondents suggested bringing underwriting standards regarding credit reports, credit scores, and repayment ability in line with the private industry. Certain organizations such as VA, Fannie Mae, Freddie Mac, and others in the mortgage industry have instituted a single debt-to-income ratio requirement of 41 percent for low-or-no-down payment affordable housing loans. The Agency is concerned that if a single ratio of 41% were adopted, the potential is that a borrower with limited income may be permitted to have mortgage payments of up to 41 percent of their income if they happened to apply during a debt free timeframe. The concern is that the borrower would be fully encumbered by their mortgage payment and would become over extended if faced with the need for a new car loan, for example. However, the Agency will maintain its current policy of using a dual ratio approach—a monthly housing expense ratio of 29 percent or less and a total debt-to-income ratio of 41 percent—until sufficient data analysis permits the adoption of the single ratio approach and the Agency determines that a single debt ratio approach is prudent given current market conditions. The Agency reserves the right to adopt the single ratio approach once data analysis supports that a single debt ratio approach does not incur more risk.

Other respondents recommended that the maximum debt to income ratio for repayment ability be raised for loans to purchase energy-efficient homes, such as loans to purchase homes built to energy-efficient standards. The respondents indicated it is industry standard to allow for increased debt ratios on energy-efficient home loans. HUD, VA, Fannie Mae, and Freddie Mac all allow for increased debt ratios for energy-efficient home loans. The rationale is that energy-efficient homes cost less to heat and cool, and the reduced costs make a higher mortgage payment may be more affordable to the borrower. Rural Development agrees some flexibility may be warranted when purchases involve homes built to energy-efficient standards. Further guidance surrounding flexibilities for increased debt ratios for energy-efficient home loans will be addressed in the handbook. Energy efficient homes are properties which are built or retro-fitted to the standards of the most recent International Energy Conservation Code (IECC) are widely regarded in the mortgage industry as energy-efficient. Rural Energy Plus provisions are further described in newly designated 7 CFR 3555.209. Lenders will certify that the most recent IECC standards have been met.

Aside from energy-efficient housing, one respondent suggested it be left up to the lender to decide when to make debt ratio exceptions above the established threshold. The respondent indicated that throughout the mortgage industry the decision to make debt ratio exceptions are up to the lenders who document compensating or mitigating factors. The Agency agrees with the respondent that debt ratio exceptions are acceptable when supported by acceptable compensating factors. Further guidance on acceptable compensating factors and flexibility of a lender to make a decision regarding an increased debt ratio will be addressed in the handbook.

Several comments were received in support of Rural Development's current acceptance of alternative documentation for income verification, specifically, the use of online resources to document employment history and income. This method of verification is now generally accepted in the mortgage industry, including Rural Development. The proposed rule did not specify methods to verify income and employment, and neither is it necessary in the final rule. Since reputable online resources can change from time to time, however, guidance pertaining to electronic verification of income and employment is provided in the handbook.

One respondent suggested that the program's income limits are too low to assist many first-time homebuyers who have been unable to acquire sufficient savings for the down payment required by other mortgage programs, and that the limits need to be increased to keep pace with the cost of living. Section 502(h)(3) of the Housing Act of 1949 governs SFHGLP income limits, and Rural Development lacks the authority to increase income limits specifically to meet the needs of more first-time homebuyers. Thus, the Agency has made no changes.

Several comments were received on the eligibility of current homeowners to obtain guaranteed loans. Some respondents argued that if the applicant currently owns housing, then approval of a SFHGLP loan should not be considered. Others suggested that the current home should be sold prior to issuance of the Loan Note Guarantee.

Still, others viewed the proposed change to allow current homeownership, as long as the homeowners do not own nor are financially responsible for another home at the time the loan closes, to be positive and stated the change would allow more homes on the market for lower income families and remove the confusion regarding a deficient housing determination. Rural Development agrees that the proposed provision might prevent some applicants from obtaining homes that meet the needs of the household. The Agency, therefore, will allow current homeowners to use the program, provided: (1) They do not have another SFHGLP or Section 502 Direct Loan by the time of closing; (2) they are financially qualified to own more than one house; (3) retaining ownership of a home is limited to one single dwelling unit per household other than the one associated with the current loan request; (4) they will occupy the home financed with the SFHGLP loan as their primary residence; (5) the current home no longer adequately meets the family's needs, and (6) they are without sufficient resources or credit to obtain the dwelling on their own without the guarantee. This change is being made to enable an eligible qualified homeowner to use the SFHGLP loan program to obtain a new primary residence that the applicant believes will meet the household's needs, while ensuring that limited program funds are used within statutory authorities to assist as many qualified individuals as possible.

Four respondents commented on funded buydown accounts. One stated that the proposed rule provided a much needed definition for buydowns. Two suggested eliminating funded buydowns from the regulations stating they are not beneficial to the applicant and may encourage inflated appraisals to cover the property seller's cost of the buydown. One respondent suggested training be required. Rural Development believes that funded buydowns can be used to assist qualified applicants to qualify for home loans and temporary interest rate buydowns are a financing tool designed to reduce the borrower's monthly mortgage payment during the early years of repayment. The Agency feels the proposed SFHGLP limitations provide adequate protection against inflated appraisals. In response to these comments, the final rule has been changed to require that a lender qualify the applicant at the note rate, rather than qualify the applicant at the temporary reduced rate, to ensure the eventual increase in mortgage payments will not affect the borrower adversely and lead to default. The mortgage industry generally accepts this approach. All remaining provisions of the preliminary rule remain unchanged. Rural Development will provide training to Agency staff and lenders upon implementation of these regulation changes.

Several comments were received on credit qualifications. Some respondents expressed a concern that increasing late payments from 1 to 3 or more late payments within the last 12 months would have a potential negative impact on delinquency rates even though the change could possibly qualify an increased number of applicants. Rural Development carefully considered the comments, and in recognition of the mortgage industry's utilization of credit scores that consider the number of late payments, has changed the regulation to incorporate the use of credit scores instead of all of the separate indicators of unacceptable credit as proposed. Rural Development SFHGLP performance and mortgage industry statistics show that credit scores are a powerful indicator of the likelihood for borrowers to be successful homeowners. Credit scores take into account all the separate indicators of credit in a credit report and encapsulate them into one score. Credit scores are widely used throughout the mortgage industry and very few loan programs, if any; do not make use of them. 7 CFR 3555.151 requires a credit score or other credit qualifications satisfactory to Rural Development to show the applicants' reasonable ability and willingness to meet their debt obligations. Further information on credit scores can be found in the handbook consistent with current Agency practice.

Several comments were received on proposed § 3555.151(h)(1)(viii) relative to payment of collection accounts within 6 months of filing an application. The respondents viewed this change as negative as it requires the applicant to wait 6 months after paying a collection in full before making application for a loan. One respondent noted that credit issues should be guidelines and provide the lender some flexibility to look at compensating factors. Rural Development decided to remove this requirement from the regulation and rely on the use of credit scores and other credit qualifications to determine credit-worthiness, within statutory requirements. Rural Development has provided examples of evaluating credit in the handbook.

Rural Development proposed to make homeownership education mandatory for all first-time homebuyers. Several respondents posed questions and concerns regarding this proposal. Some respondents believe homeownership education has little or no bearing on the success of the loan, but does increase the cost of homeownership. These respondents believe that past credit history is more important in assessing future success. Still others indicated that if Rural Development requires mandatory education, that Rural Development provides a specific curriculum and evaluation criteria or consider providing the education which would alleviate the current subjective process used by lenders. Some respondents indicated there is a lack of providers in rural areas that could result in additional program barriers by delaying closings and imposing excessive travel to obtain such services. In view of the comments received, language surrounding homeownership education will remain consistent with conditions outlined for homeownership counseling currently in place.

Section 3555.151(j) states that eligible applicants be unable to secure conventional credit elsewhere without a guarantee. This policy was adopted in the early 1990's and since that time a number of loan vehicles have emerged that are marketed as ''conventional,'' but have incorporated features that add to the potential risk of loss to applicants, such as allowing unreasonably low down payments and higher debt ratios. Some of these loans are called interest-only payment loans, graduated payment loans, negative amortization loans, and balloon payment loans. They may require private mortgage insurance. To clarify the meaning of ''conventional credit'' for purposes of the SFHGLP and distinguish it from the new, non-traditional mortgage products that claim to be ''conventional,'' the final rule uses the term ''traditional conventional credit.'' The Agency currently interprets ''traditional conventional credit'' as a loan that has a 30-year fixed term, does not require private mortgage insurance, and where the applicant: (1) Is able to make a 20 percent down payment from personal funds; (2) able to pay all closing from personal funds; (3) has a total debt ratio of 36 percent or less; (4) has a debt ratio for principal, interest, taxes and insurance of 28 percent or less; and (5) has a good credit history consisting of at least two credit bureau trade lines open and paid as agreed for at least a 24-month period.

Calculation of Income and Assets (§ 3555.152)

Rural Development has provided clarity in § 3555.152(a)(1) and (a)(2) for income calculation. For determining

repayment income, the lender must examine the previous 2-year history of the applicant's income, as well as make a determination as to whether the income is likely to continue for at least the next 3 years. These requirements do not mean that an applicant had to maintain the same employment and earn the same amount of income for the past 2 years. The requirement merely provides a reasonable period of time over which the lender must examine the applicant's past income in determining repayment ability for the future and aligns the analysis of repayment income with other Agency programs and industry practice. For annual income the lender must examine the 2-year income history for each household member. Lenders must also estimate the expected income for the next 12 months for each household member.

Lenders may also consider the training and education of applicants in determining the continuity of income, as noted in § 3555.152(a)(1). The consideration of training and education would be most applicable to newly graduated students, or students who have completed and obtained technical degrees in various fields and are entering the workforce. While these students may not have a history of employment in their respective fields, their training and education, combined with a contract for hire, may be used to determine the stability of continuity of their income.

One respondent suggested that proposed § 3555.152(c) regarding adjusted income be revised to show an increase to the $480 deduction for each family member under 18 years of age or 18 years of age or older with a disability, or a full-time student to reflect inflationary increases of the last 10 years and to be consistent with the Internal Revenue Service allowance for dependents. Rural Development's authorizing legislation does not permit a change in this amount. This deduction for dependents is required by HUD regulation 24 CFR 5.611. No change is made to this provision.

Language was added to the final rule specifically exempting income received by live-in aides from the annual income calculation. A live-in aid is a hired employee, not a household member, whose income is not typically applied to household expenses. Accordingly, income received by a live-in aid will not be included in the annual income calculation. This is consistent with 24 CFR 5.609.

Three comments were received on proposed § 3555.152(d) concerning the calculation of income from net family assets for eligibility purposes. Two respondents indicated the requirements should be eliminated as it imposes a penalty on those applicants who manage their resources and then have it count as income. One respondent recommended implementation as proposed. Rural Development's authorizing legislation, Title V of the Housing Act of 1949, as amended, requires the calculation of income according to HUD authorities. See the definition of ''income'' in 42 U.S.C. 1471(b)(5). HUD authorities require consideration of family assets in income. See 42 U.S.C. 1437a(b)(4) and 24 CFR 5.609. This section, therefore, will be adopted as proposed.

Site Requirements (§ 3555.201)

One respondent indicated that prohibiting the presence of small barns on properties would eliminate from consideration many homes which would otherwise qualify, and that small barns are commonplace on many residential properties in rural areas. The regulation has been revised to clarify that vacant land or property used primarily for agriculture, farming or commercial enterprise is ineligible. This language will allow small outbuildings which are not designed to accommodate a business or income-producing enterprise may be included in the site. Only income-producing land or buildings intended to be used principally for income-producing purposes are not permitted. Further guidance will be outlined in the handbook.

The requirement that the site value not exceed 30 percent of the value of the property was removed from the final rule because it is no longer a mortgage industry standard. This matter is typically better addressed under State or local government zoning ordinances which must be met.

Dwelling Requirements (§ 3555.202)

Two respondents discussed concerns about the proposed requirement that 150 percent of development funds be placed in escrow for incomplete exterior development. Both respondents argued that Rural Development should require only 100 percent of the funds for development is placed in escrow stating that the change would permit the lender to pay out the property seller and still protect the applicant. Rural Development agrees that this adequately protects the Government and will permit the lender to place only 100 percent of the funds for final development in escrow.

The final rule similarly covers instances when there is incomplete interior development that cannot be completed until after the borrower takes title to the property. The time to complete all unfinished development was expanded from 120 to 180 days in order to accommodate delays due to inclement weather which in parts of the country can interfere with construction for extended periods of time.

The final rule has been revised in regard to minimum thermal efficiency requirements for homes financed with guaranteed loans. New homes are typically built in accordance with local housing codes that address thermal efficiency standards. The thermal efficiency of existing homes is typically considered in the valuation process but cannot always be determined accurately. The cost to alter an existing home to meet Agency thermal standards is not always cost-effective. The final rule eliminates minimum thermal efficiency requirements for existing homes financed with guaranteed loans. Note that, properties which are built or retro-fitted to the standards of the most current IECC are widely regarded in the mortgage industry as energy-efficient and permit applicants to qualify at a higher debt ratio of 43 percent.

Manufactured homes must conform to the Federal Manufactured Home Construction and Safety Standards (FMHCSS) and be constructed in compliance with the HUD's heating and cooling requirements for the State in which the unit will be located. The final rule is consistent with other federally insured or guaranteed single-family mortgage programs.

The requirement that the property be free of termites and other wood damaging pests and organisms was removed from the final rule because these issues today are addressed by State and local governments.

Ownership Requirements (§ 3555.203)

A change was made to the final rule concerning secured leasehold interests, to accommodate leases on American Indian restricted land which are for periods of 25 years and which are renewable for a second 25-year period. Such leases are permissible.

Special Requirements for Condominiums (§ 3555.205)

Several respondents questioned the requirements for condominiums. The proposed rule states that loans may be guaranteed for condominium units in condominium projects that meet the project acceptance criteria established by HUD, VA, Fannie Mae, or Freddie Mac. Rural Development has elected to not restate the project acceptance criteria of HUD, VA, Fannie Mae, or Freddie Mac in program regulations, but

has included administrative guidance for this issue in the handbook. This represents no change from Agency current practice. For further background information, the following Web sites may prove useful:*http://www.freddiemac.com/sell/factsheets/condo_projects.html; https://www.efanniemae.com/sf/index.jsp*; and *http://www.hudclips.org/cgi/.*

Special Requirements for Community Land Trusts (§ 3555.206)

Some respondents argued that Rural Development should prevent terminating the land trust restrictions when the property is foreclosed. The respondents recommended the section be amended to allow a mortgage on the dwelling only and, thereby, keeping the restrictions in place upon forced sale of the dwelling. Removing or amending the requirement of terminating land trust restriction upon foreclosure would adversely affect the market ability of the property, thereby increasing the loss to the Government. Therefore, no change is made to the final rule.

Special Requirements for Manufactured Homes (§ 3555.208)

Several respondents suggested Rural Development thermal standards not be required for manufactured housing. Based on these comments, the requirement related to thermal standards is revised to adopt the standards established by HUD, as discussed above.

Construction must conform to the FMHCSS and HUD heating and cooling requirements for the State.

Others suggested accepting the manufacturer's warranty and not requiring any additional dealer warranty. After considering this comment, Rural Development decided to remove the requirement for Agency-approved dealer-contractors because no other Government insurance or guarantee program has a similar requirement, and because Rural Development's interest will be adequately protected under the warranty provisions of the final rule. This change also reduces the administrative burden and cost for lenders and borrowers while still protecting the Agency's interests. Agency warranty requirements will remain in place in order to ensure that the borrower's new manufactured home is warranted against manufacturing defects, damage incurred during transport from the dealer to the site, and defects related to faulty installation on the permanent foundation.

Required Servicing Actions (§ 3555.252)

Several comments were received on the proposal to permit the participation of some lenders that do not utilize tax and insurance escrow accounts. Six respondents disagreed with the proposal, stating that lenders that lack the means to escrow should not participate in the SFHGLP as approved lenders and that the escrowing process assists customers and ensures a greater homeownership success rate. Rural Development agrees that escrows can promote homeownership success, but the same result can be achieved without escrows if other safeguards are in place. For example, a lender can still monitor tax assessments and payments absent an escrow account and, in cases of non-payment, take appropriate actions like contacting the borrower.

Others supported the proposal as providing greater opportunity for small rural lenders to participate in the SFHGLP.

Two respondents stated that lenders who lack capacity to escrow should be accountable for any deficiency in the servicing of these accounts.

Rural Development wishes to promote the interest of the SFHGLP to eligible rural lending institutions with the capability to underwrite and service loans, but without the capacity to escrow. Therefore, the final rule requires the lender to establish and maintain insured escrow accounts to pay real estate taxes and assessments and required hazard and flood insurance premiums when due, or, if the lender does not have the capacity to escrow, then the lender must implement internal monitoring processes to ensure that the borrower pays real estate taxes and assessments and required hazard and flood insurance premiums when due. In all cases, the lender is accountable for any deficiency in the servicing of these accounts. This rule will provide flexibility to small rural lenders while protecting the interests of the borrower and Rural Development. No significant change has been made to the language proposed.

Two respondents took exception to proposed § 3555.252 requiring the lenders to ensure all repairs or replacements using insurance loss claims be planned, performed, and inspected in accordance with Agency construction requirements. Both respondents suggested Rural Development adopt a dollar amount threshold (below) which the lender would not have to manage the repairs; rather, the insurance funds could be paid directly to the homeowner according to industry standards. The respondents suggested $10,000 as the general industry standard. The Agency will adopt a ''de minimis'' threshold in § 3555.252 so that a specific amount may be defined in the handbook and adjusted according to changes in the industry standard. The current industry standard of $10,000 will be adopted in the handbook, subject to change based on the industry standard. If the insurance claim is beneath the de minimis threshold and other requirements are met (i.e. the account is current and there is a history of timely payments; the borrower occupies the property; and the borrower executes an affidavit agreeing to apply the funds for repairs or reconstruction of the dwelling), the funds may be released directly to the borrower.''

One respondent asked Rural Development to include guidance regarding the requirements on reporting and delinquency notification. Rural Development concurs and has provided guidance consistent with mortgage industry standards. Lenders must notify a credit repository of each new guaranteed loan, identify the loan as guaranteed by the Agency, and must report to that repository whenever any account becomes more than 30 calendar days past due. No change is needed in the proposed language. Details on lender reports to the Agency are provided in the handbook.

Borrower Actions Requiring Lender Approval (§ 3555.255)

Rural Development's final rule on partial release of security property requires, in part, that the borrower receive adequate compensation and either make a reduction to the principal balance, or make improvements to the security property, in order to maintain the current loan-to-value ratio for the guaranteed loan. If the borrower receives adequate compensation for a partial release and makes a commensurate reduction to the principal balance or makes improvements to the security property, the pre-release loan-to-value for the guaranteed loan should be preserved or improved. This clarification has been added to the final rule which otherwise remains unchanged from the proposed.

Transfer and Assumptions (§ 3555.256)

Some respondents suggested adding a section discussing the release of a co-obligor in cases of divorce. Rural Development's authorizing legislation. § 502(h)(10) of the Housing Act of 1949, as amended, prohibits this action, so this comment is not adopted.

One respondent expressed concern about transfers without triggering the

due-on-sale clause arguing that fixed rate conventional documents do not allow assumability under original mortgage terms and that the Truth in Lending documents disclose that the loan is non-assumable. This section of the rule already discusses permissible transfers subject to Section 341 of the Garn St Germain Depository Institutions Act of 1982 (Pub. L. 97–320) and no change is made on this issue.

Subpart G (§§ 3555.301 Through 3555.308)

The Agency has reorganized and renumbered subpart G in order to better organize the information and present servicing options in the order in which lenders will generally consider them.

General Servicing Techniques (§ 3555.301)

The final rule requires lenders to evaluate loss mitigation options in subpart G of the rule in an effort to resolve any repayment problems and provide borrowers with the maximum opportunity to become successful homeowners. The lender retains the discretion to choose which, if any, such options will best resolve the borrower's repayment problems while acting as a prudent lender and in the financial interests of the Government.

This section clarifies certain steps that are part of the industry standard practices the lender must take to contact a borrower who is in default, such as an initial contact to ascertain the circumstances of the default and possible resolution, and a certified letter requesting an interview with the borrower when the account becomes more than 60 days overdue. The Agency also clarifies that unless otherwise provided, Agency concurrence or a waiver is necessary for servicing plans that extend more than 90 days (§ 3555.301(h)). A waiver to the concurrence requirement may be issued if a lender demonstrates that it no longer needs oversight, which may be demonstrated by the lender's portfolio performance, such as lower than average delinquency rates, foreclosure rates, or loss claim rates. Rural Development may revoke such waiver at any time, upon notice and without appeal rights.

In order to protect the interests of the Government, the Agency will require lenders to evaluate delinquent loans to determine whether any loss mitigation plan would be appropriate. However, the initial decision whether to offer a servicing plan to the borrower continues to be within the discretion of the lender, since the lender must determine whether the borrower is eligible for a servicing plan that can feasibly cure the delinquency before submitting any servicing plan for approval in accordance with § 3555.301(h).

Protective Advances (§ 3555.302)

Two comments were received regarding protective advances. One respondent asked how the borrower would repay the advance. It is commonplace for security instruments and promissory notes to provide for protective advances to become part of the borrower's debt; hence, no change is made in response to this comment. One respondent recommended adoption of the section as proposed. Rural Development agrees with this respondent and believes the requirements related to protective advances are clear and no change is made to the regulation.

The rule further clarifies that protective advances for taxes and insurance do not require prior Agency concurrence. However, protective advances for costs other than taxes or insurance, such as emergency repairs, require Agency concurrence if the amount of the advance is significant as determined by the Agency. The handbook currently sets the threshold for significant advances to be those exceeding $2,000 and is based upon historical experience in responding to lenders who are caretaking abandoned properties in liquidation or are acquired in the lender's inventory.

Traditional Servicing Options (§ 3555.303)

The traditional servicing options—repayment agreement, special forbearance, reamortization and loan modification—previously covered in proposed §§ 3555.301, 3555.304 and 7 CFR 1980.373, have been consolidated into one section and renumbered as § 3555.303. The eligibility requirements for all traditional servicing is addressed in § 3555.303(a). Reamortization has been removed as a separate option since it is covered by loan modification.

One respondent requested clarification on extending the term of the loan. Under section 502(h)(7) of the Housing Act of 1949, as amended, the maximum loan term for SFHGLP loans is 30 years. However, section 502(h)(14(H) permits loan modification when the borrower is in default or facing imminent default, and the term of the loan may be extended up to 40 years from the date of modification. Therefore, § 3555.303(b)(3) provides that traditional servicing loan modifications may include extending the term of the loan up to 30 years from the date of modification. The guarantee is effective 30 years from the origination date, and if the loan term is extended beyond the original 30 years (i.e. for another 30-year term), the guarantee will no longer apply beyond the original 30-year loan term. A clarification has been made to the rule. Extended-term loan modifications, however, are available under § 3555.304 special servicing as discussed below in more detail.

One respondent requested clarification on allowable items for capitalization. The respondent suggested that foreclosure fees and costs, tax and insurance advances, and accrued interest be capitalized. The respondent further suggested that if the capitalization of these items results in a new loan amount that is higher than the principal loan amount originally guaranteed, the guarantee should then be based on the new and higher loan amount. Rural Development agrees that foreclosure fees and costs, tax and insurance advances, and past due principal and interest payments may be capitalized in a re-amortization designed as a loss mitigation technique. Such capitalization is consistent with mortgage industry practices and standards. Late charges or fees may not be capitalized. The amount of the guarantee, however, may not exceed the principal loan amount originally guaranteed, because the Loan Note Guarantee was issued at origination for a certain face value which cannot be amended by the lender. The regulation has been changed accordingly, and additional administrative guidance is provided in the handbook.

One respondent suggested these actions should require Agency concurrence prior to modification; failure to obtain Agency concurrence could increase loss claim exposure for Rural Development. Rural Development agrees, and the regulation has been changed accordingly in § 3555.301. Lenders will continue requesting concurrence from Rural Development to undertake modification and any other traditional servicing plans that extend more than 90 days, unless a waiver is issued pursuant to § 3555.301(h) described above.

Special Servicing Options (§ 3555.304)

A new section has been added to provide Agency policy regarding special servicing options that lenders may utilize as authorized and implemented under the final rule published on August 26, 2010 (75 FR 52429–52435). Language regarding special servicing options was not published in the proposed streamlining rule. The Agency will allow lenders to extend loans for a term of up to 40 years from the date of modification under the special servicing

options. The Agency will also allow lenders to advance funds on behalf of borrowers in amounts necessary to bring defaulted loans current, up to 30 percent of the unpaid principal balance of the loan. Upon request, the Agency will reimburse the lender for eligible advances. The intended effect of these special servicing options was to reduce mortgage foreclosures among SFHGLP borrowers and assist in stabilizing the national housing market. Before considering special servicing options, lenders must exhaust traditional servicing options or have determined that traditional servicing plans would not resolve the delinquency. The concurrence and waiver provisions of § 3555.301(h) apply to special servicing options.

Section 3555.10 is amended from the proposed rule to introduce in alphabetical order the definitions for ''Extended-term loan modification,'' ''Maximum allowable interest rate,'' ''Mortgage payment to income ratio,'' ''Mortgage recovery advance,'' and ''Total debt to income ratio'' as a result of this new section language.

Voluntary Liquidation (§ 3555.305)

The liquidation section under the proposed rule (previously § 3555.305) has been divided into two sections—voluntary liquidation (§ 3555.305) and liquidation (§ 3555.306). The new § 3555.305 expands upon and clarifies the eligibility requirements for and methods of voluntary liquidation.

One respondent believed the wording in proposed § 3555.305 (c) regarding lump-sum payments in order to reinstate accelerated accounts would preclude the lender's ability to utilize loss mitigation alternatives. Rural Development removed this wording to more clearly reflect the lender's ability to utilize loss mitigation alternatives.

One respondent suggested that proposed § 3555.305(e) be changed to allow for alternative methods of voluntary liquidation when acceptable to Rural Development and documented by the lender. This suggestion is adopted in order to provide Rural Development and the lender with more flexibility and is included as § 3555.305(e).

One respondent noted that there are too many borrower situations and servicing alternatives under this section for all to be included in the regulations. Rural Development agrees, and the regulation has been changed so lenders will continue requesting concurrence from Rural Development, unless a waiver is provided in accordance with § 3555.301(h), to undertake the listed voluntary liquidation actions and other methods documented to result in savings to the Government.

Liquidation (§ 3555.306)

Several respondents expressed concern about Rural Development's proposal to eliminate the submission of property disposition plans to Rural Development for concurrence prior to marketing real estate owned (REO) property. Some suggested that failure to obtain Agency concurrence could increase loss claim exposure to Rural Development or result in exorbitant selling fees. Rural Development agrees, and the regulation has been changed accordingly. Lenders will continue submitting property disposition plans to Rural Development for concurrence. As discussed above, Rural Development may provide a written waiver of this requirement to the lender, on a case-by-case basis, if the lender demonstrates that it no longer needs the oversight. In such cases, the lender is still required to prepare and maintain a disposition plan on each acquired property, and this plan must be available for Agency review upon request for monitoring lender performance.

Assistance in Natural Disasters (§ 3555.307)

A new section has been added to explain agency policy during natural disasters. Servicers will use their general procedures to service affected borrower accounts, minimize delinquency, and avoid foreclosure. Servicers will inspect security property and service the account based on whether the property can be rebuilt, the status of the mortgage, amount of insurance proceeds, and the time needed to repair or reconstruct the property.

Loan Guarantee Limits (§ 3555.351)

One respondent requested a clear explanation and calculation breakdown on guaranteed loan limits stating that this information is critical in order to streamline and submit correct loss claim documentation. This section and the calculation of the loss payment section (§ 3555.352) have been rewritten for clarity and administrative guidance about loss claim submissions is provided in the handbook.

Subject to the loan guarantee limits, the loss claim payment is the difference between the total indebtedness on the loan and the net recovery value. The total indebtedness includes the unpaid principal balance, accrued interest from the last day of borrower payment to the settlement date, any interest on the unsatisfied principal balance which accrued within 90 days from the settlement date, principal and interest for protective advances, and reasonable and customary liquidation costs such as attorney fees and foreclosure costs.

Net Recovery Value (§ 3555.353)

One respondent expressed concern about Rural Development's current acquisition resale factor in calculating net recovery value. The respondent stated the factor is inadequate to cover all marketing expenses incurred and suggested Rural Development consider reasonable allowances to arrive at the actual net recovery value similar to HUD. The acquisition resale factor is only used when the lender still has ownership of the REO property at the time of filing a loss claim for payment. The disposition cost factor is reviewed by Rural Development and adjusted as warranted on an area basis, but not on a case-by-case basis. Rural Development believes that the current factor is adequate to cover all marketing expenses incurred, and no change is made on this issue.

Loss Claim Procedures (§ 3555.354)

Several respondents commented on the requirements established regarding REO property. Several respondents commented that 90 days from the foreclosure date or the end of any applicable redemption period is insufficient to market and sell foreclosed property. Others requested guidance on filing claims. Rural Development agrees that, in many cases, 90 days will be insufficient. After further review and consideration of different economic and market conditions, the regulation has been amended so the lender must notify Rural Development if the property has not been sold within 9 months from the foreclosure date or applicable redemption period. The 9-month period should prove sufficient to market and sell foreclosed property under most economic and market conditions. Administrative procedures relative to the disposition of REO and filing claims are provided in the handbook.

One respondent requested the regulation provide evaluation criteria required to process a loss claim without a deficiency judgment. Section 3555.355 lists typical circumstances in which claims would be reduced or denied. Further processing guidance on this issue is provided in the handbook.

The period of time in which loss claims may be submitted after the property has been sold was increased in the final rule from 30 to 45 days in order to provide lenders more flexibility in submitting the claims. Late claims

submitted beyond this period of time may be rejected by Rural Development.

Future Recovery (§ 3555.356)

Three respondents discussed the calculation and administration of future recovery. One suggested that Rural Development should reimburse the lender when the sale results in a loss and two respondents requested clarification on the administrative process of calculating the amount of future recovery. Rural Development believes that since the lender controls the sale process, reimbursing the lender for a loss could encourage the lender to accept less than a fair price at the sale. Reimbursing Rural Development for a share of future recovery is justified since Rural Development's claim payment was calculated based on a liquidation appraisal and not on an actual sale. Guidance regarding the future recovery process is provided in the handbook. No change is made in the final rule.

List of Subjects

7 CFR Part 1980

Home improvement, Loan programs, Housing and community development, Mortgage insurance, Mortgages, Rural areas.

7 CFR Part 3555

Administrative practice and procedure, Conflict of interests, Credit, Environmental impact statements, Equal credit opportunity, Fair housing, Flood insurance, Home improvement, Housing, Loan programs-Housing and community development, Low and moderate income housing, Manufactured homes, Mortgage insurance, Mortgages, Rural areas, Subsidies.

Therefore, Chapters XVIII and XXXV, Title 7, Code of Federal Regulations are amended as follows:

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 1980—GENERAL

■ 1. The authority citation for part 1980 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart D—[Removed and Reserved]

■ 2. Subpart D of part 1980 is removed and reserved.

CHAPTER XXXV—RURAL HOUSING SERVICE, DEPARTMENT OF AGRICULTURE

PART 3555—GUARANTEED RURAL HOUSING PROGRAM

■ 3. Part 3555, consisting of subparts A through H, is added to read as follows:

Subpart A—General

Sec.
3555.1 Applicability.
3555.2 Purpose.
3555.3 Civil rights.
3555.4 Mediation and appeals.
3555.5 Environmental requirements.
3555.6 State and local law.
3555.7 Exception authority.
3555.8 Conflict of interest.
3555.9 Enforcement.
3555.10 Definitions and abbreviations.
3555.11–3555.49 [Reserved]
3555.50 OMB control number.

Subpart B—Lender Participation

3555.51 Lender eligibility.
3555.52 Lender approval.
3555.53 Contracting for loan origination.
3555.54 Sale of loans to approved lenders.
3555.55–3555.99 [Reserved]
3555.100 OMB control number.

Subpart C—Loan Requirements

3555.101 Loan purposes.
3555.102 Loan restrictions.
3555.103 Maximum loan amount.
3555.104 Loan terms.
3555.105 Combination construction and permanent loans.
3555.106 [Reserved]
3555.107 Application for and issuance of the loan guarantee.
3555.108 Full faith and credit.
3555.109–3555.149 [Reserved]
3555.150 OMB control number.

Subpart D—Underwriting the Applicant.

3555.151 Eligibility requirements.
3555.152 Calculation of income and assets.
3555.153–3555.199 [Reserved]
3555.200 OMB control number.

Subpart E—Underwriting the Property

3555.201 Site requirements.
3555.202 Dwelling requirements.
3555.203 Ownership requirements.
3555.204 Security requirements.
3555.205 Special requirements for condominiums.
3555.206 Special requirements for community land trusts.
3555.207 Special requirements for Planned Unit Developments (PUDs).
3555.208 Special requirements for manufactured homes.
3555.209 Rural Energy Plus loans.
3555.210–3555.249 [Reserved]
3555.250 OMB control number.

Subpart F—Servicing Performing Loans

3555.251 Servicing responsibility.
3555.252 Required servicing actions.
3555.253 Late payment charges.
3555.254 Final payments.
3555.255 Borrower actions requiring lender approval.
3555.256 Transfer and assumptions.
3555.257 Unauthorized assistance.
3555.258–3555.299 [Reserved]
3555.300 OMB control number

Subpart G—Servicing Non-Performing Loans

3555.301 General servicing techniques.
3555.302 Protective advances.
3555.303 Traditional servicing options.
3555.304 Special servicing options.
3555.305 Voluntary liquidation.
3555.306 Liquidation.
3555.307 Assistance in natural disasters.
3555.308–3555.349 [Reserved]
3555.350 OMB control number.

Subpart H—Collecting on the Guarantee.

3555.351 Loan guarantee limits.
3555.352 Loss covered by the guarantee.
3555.353 Net recovery value.
3554.354 Loss claim procedures.
3555.355 Reducing or denying the claim.
3555.356 Future recovery.
3555.357–3555.399 [Reserved]
3555.400 OMB control number.

Authority: 5 U.S.C. 301; 42 U.S.C. 1471 *et seq.*

Subpart A—General

§ 3555.1 Applicability.

This part sets forth policies for the Single Family Housing Guaranteed Loan Program (SFHGLP) administered by USDA Rural Development. It addresses the requirements of section 502(h) of the Housing Act of 1949, as amended, and includes policies regarding originating, servicing, holding and liquidating SFHGLP loans. Any provision regarding the expenditure of funds under this part is contingent upon the availability of funds.

§ 3555.2 Purpose.

(a) *General.* The purpose of the SFHGLP is to provide low- and moderate-income persons who will live in rural areas with an opportunity to own decent, safe and sanitary dwellings and related facilities. The SFHGLP offers applicants without sufficient resources to provide the necessary housing on their own account, and unable to secure the credit necessary for such housing from other sources upon terms and conditions, which the applicant can reasonably be expected to fulfill without the guarantee, an opportunity to acquire, build, rehabilitate, improve, or relocate dwellings in rural areas.

(b) *Demonstration programs.* Rural Development may authorize limited demonstration programs as allowed by law. The objective of these demonstration programs will be to test new approaches to offering housing under the statutory authority granted to the Secretary. Therefore, such demonstration programs may not be

consistent with all of the provisions contained in this part. However, any statutory SFHGLP requirements will remain in effect.

§ 3555.3 Civil rights.

Rural Development, lenders, and their agents must administer the program fairly, and in accordance with both the letter and the spirit of all equal opportunity, equal credit opportunity and fair housing legislation, and applicable executive orders. Loan guarantees, services, and benefits provided under this part shall not be denied to any person based on race, color, national origin, sex, religion, marital status, familial status, age (provided the applicant has the capacity to enter into a binding contract), handicap, receipt of income from public assistance, sexual orientation, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). All activities under this part shall be accomplished in accordance with the Fair Housing Act (42 U.S.C. 3601–3620), the Equal Credit Opportunity Act (15 U.S.C. 1691), and Executive Order 11063 as amended by Executive Order 12259, as applicable. Rural Development's civil rights compliance requirements are provided in 7 CFR part 1901, subpart E.

§ 3555.4 Mediation and appeals.

Whenever Rural Development makes a decision that will adversely affect a participant, the participant may proceed with alternative dispute resolution including mediation and a USDA National Appeals Division hearing in accordance with 7 CFR parts 1 and 11. The participant also may request an informal review of the adverse decision made by Rural Development. Except when the adverse decision applies to a loss claim, the applicant or borrower and the lender may participate in the appeal process. Adverse decisions made by the lender cannot be appealed unless concurrence by Rural Development was required by this subpart and obtained by the lender.

§ 3555.5 Environmental requirements.

(a) *Policy.* Rural Development will consider environmental quality, economic, social, and other relevant factors in program development and decision-making processes. Rural Development will take into account potential environmental impacts of proposed projects by working with applicants, other Federal agencies, American Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program's goals in a manner that will protect environmental quality.

(b) *Regulatory references.* Loan processing and servicing actions under this part will be completed in accordance with the requirements of part 1940, subpart G of this title and part 1924, subpart A of this title, which addresses lead-based paint requirements; and any other Agency regulations addressing environmental requirements for the SFHGLP.

(c) *Agency responsibilities.* Rural Development is responsible for compliance with all applicable environmental regulations and statutes.

(d) *Lender and loan applicant responsibilities.* (1) Lenders must use due diligence in regard to potential environmental hazards to ensure the property is decent, safe and sanitary and of sufficient value to adequately secure the loan. The level of due diligence review to determine potential environmental hazards must be equivalent to the standards established by Fannie Mae, Freddie Mac, FHA, or the VA.

(2) Mortgage loan transactions will be subject to the requirements of the 1994 National Flood Insurance Reform Act to determine if the dwelling is located in a Special Flood Hazard Area (SFHA).

(3) On an as needed basis, lenders and loan applicants will assist Rural Development in obtaining such information as Rural Development needs to complete its environmental review and to cooperate in the resolution of environmental problems.

(4) Lenders will become familiar with Agency environmental requirements, so they can advise applicants and reduce the probability of unacceptable applications being submitted to Rural Development.

(5) The lender must comply with Federally mandated flood insurance purchase requirements. Existing dwellings in a SFHA are not eligible under the SFHGLP unless flood insurance through the FEMA National Flood Insurance Program (NFIP) is available. The lender will require the borrower to obtain, and maintain for the term of the mortgage, flood insurance for any property located in a SFHA, listing the lender as a loss payee.

(6) The borrower must obtain, and continuously maintain for the life of the mortgage, flood insurance on the security property in an amount sufficient to protect the property securing the guaranteed loan. Flood insurance policies must be issued under the NFIP, or by a licensed property and casualty insurance company authorized to participate in NFIP's ''Write Your Own'' program.

(7) Rural Development, will not guarantee loans for new or proposed homes in an SFHA unless the lender obtains a Letter of Map Amendment (LOMA) that removes the property form the SFHA or Letter of Map Revision (LOMR) that removes the property from the SFHA or obtains a FEMA elevation certificate that shows that the lowest habitable floor (including basement) of the dwelling and all related building improvements is built at or above the 100 year flood plain elevation in compliance with the NFIP.

§ 3555.6 State and local law.

Lenders will comply with applicable State and local laws and regulations, including the laws of American Indian tribes. Supplemental guidance will be issued in the case of any conflict with or significant differences from provisions of this part.

§ 3555.7 Exception authority.

The Administrator of the Agency, or a designee, may make an exception to any requirement or provision of this part or to address any omissions in this part, when the Administrator, or designee, determines that application of the requirement or failure to take action would adversely affect the Government's interest. Any exception must be consistent with the authorizing statute and other applicable laws.

§ 3555.8 Conflict of interest.

(a) *Applicant or borrower responsibility.* The applicant or borrower must disclose to the lender any prohibited relationship or association with any Rural Development employee, and the lender must disclose that information to Rural Development.

(b) *Lender responsibility.* The lender must disclose to Rural Development any prohibited relationship or association it, or any of its employees, has with any Rural Development employee.

(c) *Prohibited relationships and associations.* Prohibited relationships and associations include the following:

(1) Immediate family members, including parents and children, whether related by blood or marriage;

(2) Close relatives, including grandmother, grandfather, aunt, uncle, sister, brother, niece, nephew, granddaughter, grandson, or first cousin, whether related by blood or marriage;

(3) Any household residents;

(4) Immediate working relationships, including coworkers in the same office, subordinates, and immediate supervisors; and

(5) Close business associations, including business partnerships, joint ventures, or closely held corporations.

(d) *Result of disclosure.* Disclosure of prohibited relationships and associations under this section will not necessarily result in applicant, borrower or lender ineligibility. Disclosures may result in reassignment with regard to the loan guarantee in question so that no prohibited relationships or associations exist between the Rural Development employees responsible for loan guarantee transactions and lenders, borrowers, or applicants.

§ 3555.9 Enforcement.

Rural Development will take such actions as are appropriate and necessary to enforce the provisions of these regulations. Such actions will include, but not be limited to, reduction of the loss claim payment; termination of a lender's or servicer's participation in the SFHGLP; suspension and debarment of participation in this or other Federal programs; and, any other appropriate administrative, civil, or criminal actions as allowed by law. Rural Development may assess civil monetary penalties pursuant to Section 543 of the Housing Act of 1949, 42 U.S.C. 1409s(b).

§ 3555.10 Definitions and abbreviations.

The definitions and abbreviations in this section apply to this part.

Acceleration. Demand for immediate repayment of the entire balance of a debt if the covenants in the promissory note, assumption agreement, or security instruments are breached.

Adjusted annual income. Income from all household members who live or propose to live in the dwelling as their primary residence for all or part of the ensuing 12 months. Adjusted annual income is used to determine whether an applicant is income-eligible for a guaranteed loan, or interest assistance, if applicable. Adjusted annual income provides for deductions to account for varying household circumstances and expenses. See § 3555.152(c) for a complete description of adjusted annual income.

Agency. The Rural Housing Service of the U.S. Department of Agriculture, Rural Development.

Agency employee. Any employee of the Rural Housing Service, or any employee of the Rural Development mission area who carries out SFHGLP functions.

Alien. See ''Qualified alien.''

Amortization. A gradual reduction of the mortgage debt through equal monthly principal and interest payments sufficient to fully repay the unpaid principal balance over the mortgage term.

Amortized payment. Equal monthly payments under a fully amortized mortgage loan that provides for the scheduled payment of interest and principal over the term of the loan.

Annual fee. A periodic amount that is based on the average annual scheduled unpaid principal balance of the loan and is paid by the servicing lender to Rural Development on an annual basis for issuance of a Loan Note Guarantee. The fee may be passed on to the borrower and included in the monthly mortgage payment of a borrower and is used when calculating payment ratios.

Annual income. The income of all household members calculated according to § 3555.152(b). Annual income is used to determine adjusted annual income in § 3555.152(c) for program eligibility purposes.

Applicant. An individual applying to a lender for a guaranteed loan.

Area median income. The median income in a specific locality, typically a county or Metropolitan Statistical Area (MSA), as determined by the Department of Housing and Urban Development.

Assumption. A method of selling real estate wherein the property purchaser accepts the liability for payment of an existing mortgage.

Borrower. An individual obligated to repay the loan guaranteed under the Guaranteed Rural Housing loan program.

Combination construction and permanent loan. A guaranteed loan on which the Rural Development guarantee becomes effective at the time construction of an eligible single family housing project begins.

Community land trust. A private nonprofit community housing development organization that is established to acquire parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases. See section 502(a)(3)(B) of the Housing Act of 1949, 42 U.S.C. 1472(a)(3)(B), as amended.

Conditional commitment. Rural Development's agreement that a proposed loan will be guaranteed if all conditions and requirements established by Rural Development are met.

Condominium project. A real estate project in which each owner has title to a unit in a building, an undivided interest in the common areas of the project and sometimes the exclusive use of certain limited common areas. See § 526(d) of the Housing Act of 1949, as amended.

Debarment. An action taken under 2 CFR part 180 or 417 to exclude a person or entity from participating in Federal programs.

Disability. See ''Person with a disability.''

Dwelling. A house, manufactured home, or condominium unit, and related facilities, such as a garage or storage shed, used or to be used as the borrower's principal residence.

Elderly family. An elderly family consists of one of the following:

(1) A person who is the head, spouse, or sole member of a household and who is 62 years of age or older, or who is disabled, and is an applicant or borrower;

(2) Two or more persons who are living together, at least one of whom is age 62 or older, or disabled, and who is an applicant or borrower; or

(3) Where the deceased borrower or spouse in a household was at least 62 years old or disabled, the surviving household member shall continue to be classified as an elderly household for the purpose of determining adjusted income, even though the surviving members may not meet the definition of an elderly family on their own, provided:

(i) They occupied the dwelling with the deceased household member at the time of the death;

(ii) If one of the surviving household members is the spouse of the deceased household member, the surviving household shall be classified as an elderly family only until the remarriage or death of the surviving spouse; and

(iii) At the time of the death of the deceased household member the dwelling was financed with a Guaranteed Rural Housing loan.

Escrow account. A trust account that is established by the lender or its servicing agent to hold funds collected from the borrower and allocated for the payment of real estate taxes, special assessments, hazard or flood insurance premiums, and other similar expenses.

Existing dwelling. A dwelling that does not meet the definition of ''new dwelling''.

Extended-term loan modification. A loan modification authorized under § 3555.304 of this part, in which the lender reduces the interest rate to a level at or below the maximum allowable interest rate and then extends the repayment term up to a maximum of 40 years from the date of loan modification, but only as long as is necessary to achieve the targeted mortgage payment to income ratio.

Fannie Mae. A private, shareholder-owned company with a charter from Congress to support the housing finance system, formerly officially known as the Federal National Mortgage Association.

FEMA. The United States Department of Homeland Security, Federal Emergency Management Agency.

FHA. The Federal Housing Administration of the United States Department of Housing and Urban Development.

FHLB. Federal Home Loan Bank.

First-time homebuyer. Individuals who meet any one of the following three criteria are considered first-time homebuyers:

(1) An individual who has had no ownership interest in a principal residence during the three-year period ending on the date of loan closing.

(2) An individual who is a displaced homemaker and who, except for owning a home with a spouse, has had no ownership interest in a principal residence during the three-year period ending on the date of loan closing. Displaced homemakers include any individual who is:

(i) An adult;

(ii) Unemployed or underemployed;

(iii) Experiencing difficulty in obtaining or upgrading employment; and

(iv) In recent years has worked primarily without remuneration to care for the home and family, but has not worked full-time, full-year in the labor force.

(3) An individual who is a single parent and who, except for owning a home with a spouse, has had no ownership interest in a principal residence during the three-year period ending on the date of loan closing. Single parents include any individual who is:

(i) Unmarried or legally separated; and

(ii) Has custody or joint custody of one or more children, or is pregnant.

Forbearance agreement. An agreement between the lender and the borrower providing for temporary suspension of payments or a repayment plan that calls for periodic payments of less than the normal monthly payment, periodic payments at different intervals, etc. to bring the account current.

Freddie Mac. A private, shareholder owned company with a charter from Congress to support the housing finance system, formerly officially known as the Federal Home Loan Mortgage Corporation.

Funded buydown account. An escrow account funded by the lender, seller, or through a third party gift, from which monthly payments are released directly to the lender to reduce the amount of interest on a loan, thereby improving an applicant's repayment ability.

Ginnie Mae. Government National Mortgage Association, a Government-owned corporation within HUD.

Household. All persons routinely living in the dwelling as principal residence, except for live-in aides, foster children, and foster adults.

Housing Act of 1949. The Act which, in part, provides the authority for single family housing programs, codified at 42 U.S.C. 1471 *et seq.*

HUD. The United States Department of Housing and Urban Development.

Interest assistance. Agency assistance available to eligible borrowers that reduces the effective interest rate on the guaranteed loan. Interest assistance applied to borrowers whose loans were approved as a subsidized guaranteed loan between April 17, 1991, and September 30, 1991, and who entered into interest assistance and shared equity agreements at loan closing.

IRS. The Internal Revenue Service of the United States Department of the Treasury.

Leasehold estate. The right to use and occupy real estate for a stated term and under conditions which have been conveyed by a lease.

Lender. The entity making, holding, or servicing a loan that is guaranteed under the provisions of this part.

Live-in aide. A person who:

(1) Lives with an elderly person or a person with a disability and

(2) Is essential to that person's care and well-being, and

(3) Is not obligated for the person's support, and

(4) Would not be living in the unit except to provide the support services.

Loan modification. A written agreement that permanently changes an original note term, such as the interest rate, monthly payment, and/or the principal balance due to capitalization of interest or advances.

Low-income. An adjusted income that is greater than the HUD established very low-income limit, but that does not exceed the HUD established low-income limit (generally 80 percent of median income adjusted for household size) for the county or Metropolitan Statistical Area where the property is or will be located.

Manufactured home. A structure that is built on a permanent foundation according to Federally Manufactured Home Construction and Safety Standards established by HUD and found at 24 CFR part 3280.

Market value. The value of the property as determined by a current appraisal made in accordance with the Uniform Standards of Professional Appraisal Practices.

Maximum allowable interest rate. For purposes of § 3555.304, the rate established by the Agency in a **Federal Register** notice describing how to calculate the maximum allowable interest rate. If the maximum allowable interest rate has not been established by notice in the **Federal Register**, the maximum allowable interest rate shall be 50 basis points greater than the most recent Freddie Mac Weekly Primary Mortgage Market Survey (PMMS) rate for 30-year fixed-rate mortgages (U.S. average), rounded to the nearest one-eighth of one percent (0.125%), as of the date the loan modification is executed. Weekly PMMS rates are published on the Freddie Mac Web site, and the Federal Reserve Board includes the average 30-year PMMS rate in the list of Selected Interest Rates that it publishes weekly in its Statistical Release H.15.

Median income. The area median income, adjusted for family size, as established by HUD.

Moderate income. The greater of:

(1) 115 percent of the U.S. median family income,

(2) The average of the state-wide and state non-metro median family income,

(3) 115/80ths of the area low-income limit adjusted for household size for the county or MSA where the property is, or will be, located.

Modest housing. For purposes of this part, ''modest housing'' is the housing that a low- or moderate-income borrower can afford based on their repayment ability.

Mortgage. A form of security instrument or consensual lien on real property including a real estate mortgage and a deed of trust.

Mortgage credit certificate. A certificate issued by an authorized State or local housing finance agency that documents a Federal income tax credit awarded to a first-time homebuyer and/or low- or moderate-income homebuyer. The Federal income tax credit reduces the applicant's Federal income tax liability, which improves his or her repayment ability.

Mortgage payment to income ratio. As used in § 3555.304, this ratio is the monthly mortgage payment (principal, interest, taxes, and insurance) divided by the borrower's gross monthly income.

Mortgage recovery advance. A mortgage recovery advance is funds advanced by the lender on behalf of a borrower to satisfy the borrower's arrearage, pay legal fees and foreclosure costs related to a cancelled foreclosure action, and reduce principal. Upon request, RHS will reimburse the lender for eligible mortgage recovery advances under § 3555.304.

MSA (Metropolitan Statistical Area). A geographic entity defined by the United States Office of Management and Budget.

Net family assets. The value of assets available to a household, as contained in § 3555.152(d).

Net recovery value. The amount available to apply to the outstanding unpaid loan balance after considering the value of the security property and other amounts recovered, and deducting the costs associated with liquidation, acquisition and sale of the property. Net recovery value is calculated differently depending on the type of disposition, as contained in § 3555.353.

New dwelling. A dwelling that is to be built is under construction, or a dwelling that is less than one year old and has never been occupied. A manufactured home is considered a new unit if the manufacturer's date is within 12 months of the purchase contract and the unit has never been occupied or installed at any other location as otherwise provided by Rural Development.

Participant. For the purpose of appeals, a participant is any individual or entity that has applied for, or whose right to participate in or receive a payment, loan guarantee, or other benefit, is affected by an Agency decision in accordance with 7 CFR 11.1.

Person with a disability. Any person who has a physical or mental impairment that substantially limits one or more major life activities, including functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, has a record of such an impairment, or is regarded as having such an impairment.

Planned Unit Development. For the purpose of this definition, a condominium is not a Planned Unit Development (PUD). A PUD is a development that has all of the following characteristics:

(1) The individual unit owners own a parcel of land improved with a dwelling. This ownership is not in common with other unit owners;

(2) The development is administered by a homeowners association that owns and is obligated to maintain property and improvements within the development (for example, greenbelts, recreation facilities and parking areas) for the common use and benefit of the unit owners; and

(3) The unit owners have an automatic, non-severable interest in the homeowners association and pay mandatory assessments.

Pre-foreclosure sale. A sale of property in which the lender and borrower agree to accept the proceeds of the sale to satisfy a defaulted mortgage, even though this may be less than the amount owed on the mortgage, in order to avoid foreclosing on the property.

Primary residence. See ''Principal residence.''

Principal residence. The home domicile physically occupied by the owner for the major portion of the year and the address of record for such activities as Federal income tax reporting, voter registration, occupational licensing, etc.

Prior lien. A lien against the security property that is superior in right to the lender's debt instrument.

Qualified alien. See the definition of the term under Section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (8 U.S.C. 1641).

Real estate taxes. Taxes and assessments estimated to be due and payable on the property.

REO (Real Estate Owned). Property that formerly served as security for a guaranteed loan and for which the lender holds title.

Repayment income. Used to determine whether an applicant has the ability to make monthly loan payments. Repayment income may include amounts excluded for the purpose of determining adjusted annual income. See § 3555.152(a) for a complete description of repayment income.

Rural area. The definition of ''rural area'' is found in section 520 of the Housing Act of 1949, as amended.

Rural Development. A mission area within USDA that includes the Rural Housing Service, the Rural Utilities Service, and the Rural Business-Cooperative Service.

Scheduled payment. The monthly installment on a promissory note, as modified by an interest assistance agreement or forbearance agreement, plus escrow payments.

Secured loan. A loan that is collateralized by property so that in the event of a default on the loan, the property may be sold to pay down the debt.

Security instrument. The mortgage, or deed of trust, that secures the promissory note or assumption agreement.

Security property. All the real property that serves as collateral for a guaranteed loan.

Settlement date. The settlement date, for the purpose of loss calculation, is the later of the following:

(1) Actual foreclosure date;

(2) The closing date, if sold to a third party at the foreclosure sale;

(3) The date the borrower sells the property to a third party in order to avoid or cure a default situation, with prior approval of the lender; and

(4) When title is acquired to the security following the expiration of any state-required redemption or confirmation period.

SFHGLP. Single Family Housing Guaranteed Loan Program. The SFHGLP guarantees loans under section 502 of the Housing Act of 1949. Under the guarantee, the holder of the loan note may be reimbursed by Rural Development for all or part of a loss incurred if a borrower defaults on a loan.

Short sale. A type of voluntary liquidation (also referred to as a preforeclosure sale or short payoff) where a borrower and the lender who holds the mortgage on the property agree to sell the property at fair market value, but for less than the current outstanding debt (including any missing payments, late fees, penalties, and advances for taxes and the like).

Supplemental loan. A guaranteed loan made in conjunction with a transfer and assumption to provide funds to complete the transaction.

Suspension. An action taken under 2 CFR parts 180 or 417 to exclude a person or entity from participation in Federal programs for a temporary period, pending completion of an investigation of wrongdoing.

Total debt to income ratio. Total debt to income ratio is defined as the borrower's monthly mortgage payment plus all recurring monthly debt divided by the borrower's gross monthly income.

Unauthorized assistance. Any guaranteed loan or interest assistance for which there was no regulatory or statutory authorization, or for which the borrower was not eligible.

United States citizen. An individual who resides as a citizen in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands.

USDA. The United States Department of Agriculture.

U.S. non-citizen national. A person born in American Samoa or Swains Island on or after the date the U.S. acquired American Samoa or Swains Island, or a person whose parents are U.S. non-citizen nationals.

VA. United States Department of Veterans Affairs.

Veterans' preference. A preference in loan processing extended to a SFHGLP loan applicant who served on active duty and has been discharged or released from the active forces on conditions other than dishonorable from

the United States Army, Navy, Air Force, Marine Corps, or Coast Guard. The preference applies to the service person, or the family of a deceased serviceperson who died in service before the termination of such war or such period or era. The applicable timeframes are:

(1) During the period of April 6, 1917, through March 31, 1921;

(2) During the period of December 7, 1941, through December 31, 1946;

(3) During the period of June 27, 1950, through January 31, 1955;

(4) For a period of more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975;

(5) During the period beginning August 2, 1990, and ending January 2, 1992, provided, of course, that the veteran is otherwise eligible; or

(6) During any other period as prescribed by Presidential proclamation or law.

§§ 3555.11–3555.49 [Reserved]

§ 3555.50 OMB control number.

The report and recordkeeping requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0179.

Subpart B—Lender Participation

§ 3555.51 Lender eligibility.

A lender must meet the requirements described in this section to be approved for participation in the SFHGLP.

(a) *Ability to underwrite and service loans.* The lender must have a demonstrated ability to underwrite and service single-family home loans. A lender will be considered to have such a demonstrated ability if it qualifies as one of the following:

(1) A State Housing Agency;

(2) A lender approved as a supervised or nonsupervised mortgagee by HUD with direct endorsement authority for submission of applications for Federal Housing Mortgage Insurance;

(3) A supervised or nonsupervised mortgagee with authority to close VA-guaranteed loans on the automatic basis;

(4) A lender approved by Fannie Mae for single-family loans;

(5) A lender approved by Freddie Mac for single-family loans;

(6) A Farm Credit System institution that provides documentation of its ability to underwrite and service single-family loans. Lenders who are a Farm Credit System lender with direct lending authority meet demonstrated ability;

(7) A lender participating in other Rural Development or Farm Service Agency guaranteed loan programs that provide documentation of its ability to underwrite and service single family loans. Documentation criteria for other Rural Development or Farm Service Agency guarantee loan programs require an active lender agreement; or

(8) A Federally supervised lender that provides documentation of its ability to originate, underwrite and service single-family loans. Acceptable sources of supervision include:

(i) Being a member of the Federal Reserve System;

(ii) The Federal Deposit Insurance Corporation (FDIC);

(iii) The National Credit Union Administration (NCUA);

(iv) The Office of Thrift Supervision (OTS);

(v) The Office of the Comptroller of the Currency (OCC).

(vi) The Federal Housing Finance Board regulating lenders within the Home Loan Bank FHLB system.

(9) A lender may demonstrate its ability to originate and underwrite loans by submitting appropriate documentation, examples of which include, but are not limited to:

(i) A summary of residential mortgage lending activity.

(ii) Written criteria outlining the lender's policy and procedures for originating, underwriting and closing residential mortgage loans.

(iii) Evidence of an experienced loan underwriter on staff.

(iv) Certification the lender will contract with an Agency-approved lender meeting the criteria to participate in the program as a servicer.

(10) A lender may demonstrate its ability to service loans by submitting appropriate documentation, examples of which include, but are not limited to:

(i) Evidence of a written plan when contracting for escrow services.

(ii) Evidence the lender has serviced single-family residential mortgage loans in the year prior to request lender approval to participate in the SFHGLP.

(b) *SFHGLP participation requirements.* Lenders and their agents must comply with the following requirements:

(1) Keep up to date, and comply with, all Agency regulations and handbooks, including all amendments and revisions of program requirements and policies. Lenders who originate a minimal number loans, as determined by the Agency, in a 24 month time frame may be required to take updated training to ensure a lender's continued knowledge of the program;

(2) Regularly check Rural Development's Web site for new issuances related to the program;

(3) Underwrite loans according to Rural Development regulations and process and approve loans in accordance with program instructions;

(4) Review loan applications for accuracy and completeness,

(5) Ensure that applicant income limits are not exceeded;

(6) Ensure that borrowers have adequate loan repayment ability and acceptable credit histories;

(7) Ensure that loss claims include only supportable costs;

(8) Cooperate fully with Agency reporting and monitoring requirements;

(9) Comply with limitations on loan purposes, loan limitations, interest rates, and loan terms;

(10) Inform Rural Development immediately after the sale, transfer, or change of servicers of any Agency guaranteed loan;

(11) Maintain reasonable and prudent business practices consistent with generally accepted mortgage industry standards, such as maintaining fidelity bonding;

(12) Remain responsible for servicing even if servicing has been contracted to a third party;

(13) Use Rural Development, HUD, Fannie Mae, or Freddie Mac forms, unless otherwise approved by Rural Development;

(14) Maintain eligibility under paragraph (a) of this section;

(15) Notify Rural Development if there are any material changes in organization or practices;

(16) Be neither debarred nor suspended from participation in Federal programs, not debarred, suspended or sanctioned under state licensing and certification laws and regulation;

(17) Notify Rural Development in the event of its bankruptcy or insolvency;

(18) Remain free from default and delinquency on any debt owed to the Federal government;

(19) Allow Rural Development or its representative access to the lender's records, including, but not limited to, records necessary for on-site and desk reviews of the lender's operation and the operations of any of its agents to verify compliance with Agency regulations and guidelines;

(20) Maintain adequate operational quality control and reporting procedures to prevent mortgage fraud;

(21) Maintain complete loan files with all required documentation that is accessible by the Agency upon request for review; and

(22) Execute a lender's agreement provided by Rural Development.

§ 3555.52 Lender approval.

(a) *Initial approval.* The lender must apply for and receive approval from

Rural Development to participate in the SFHGLP. Application forms are available from Rural Development.

(b) *Conditions of approval.* The lender must provide evidence to support their ability to originate, underwrite and/or service SFHGLP loans as outlined in § 3555.51(a), including evidence of the lender's internal loan criteria and quality control. New lenders will be subject to mandatory training prior to lender approval in accordance with Agency procedures.

(c) *Termination of approval.* Lender approval may be terminated in any of the following situations:

(1) *Lapse of any eligibility requirement.* In the event that a lender fails to meet any of the requirements described in § 3555.51, the lender must notify Rural Development immediately. Rural Development may terminate the lender's approval upon written notice and in accordance with the lender's agreement. The Agency may take other appropriate corrective action due to non-compliance with any of the requirements in this part and the lender's agreement. A lender whose approval has been terminated must sell any SFHGLP loans it holds to an approved lender immediately, and in no event later than 6 months, after termination of approval.

(2) *Voluntary withdrawal.* The lender may choose to end participation in the SFHGLP at any time. If the withdrawing lender has originated SFHGLP loans and obtained conditional commitments but has not closed the loans, or is holding or servicing SFHGLP loans, the lender must make arrangements prior to withdrawing for the transfer of such loans to lenders approved to participate in the SFHGLP.

§ 3555.53 Contracting for loan origination.

Lenders may contract with mortgage brokers, non-approved lenders, or other entities for loan origination services, closing services, or both, provided the loan is transferred immediately after closing to an Agency approved lender to which the guarantee will be issued. The approved lender is responsible for ensuring that the loan is properly underwritten, obtaining the conditional commitment, ensuring that the loan is properly closed, and ensuring that all closing costs, financing, and settlement fees meet Agency program requirements.

§ 3555.54 Sale of loans to approved lenders.

Lenders may sell SFHGLP loans only to other Agency-approved lenders, Fannie Mae, Freddie Mac, or the Federal Home Loan Banks. In such a sale, the purchasing lender acquires all rights of the selling lender under the Loan Note Guarantee, and assumes all of the selling lender's obligations contained in any note, security instrument, or Loan Note Guarantee in connection with the loan purchased. The purchasing lender may be subject to any defenses, claims, or offsets that Rural Development would have had against the selling lender if the selling lender had continued to hold the loan. The lender must notify Rural Development immediately upon the sale or transfer of servicing of a SFHGLP loan.

§§ 3555.55—3555.99 [Reserved]

§ 3555. 100 OMB control number.

The report and recordkeeping requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0179.

Subpart C—Loan Requirements

§ 3555.101 Loan purposes.

Loan funds must be used to acquire a new or existing dwelling to be used by the applicant as a principal residence.

(a) *Eligible purposes.* Loan funds may be used for:

(1) The construction or purchase of a new dwelling;

(2) The cost of acquisition of an existing dwelling;

(3) The cost of repairs associated with the acquisition of an existing dwelling; or

(4) Acquisition and relocation of an existing dwelling.

(b) *Eligible costs.* Loan funds also may be used to pay for the following items associated with the acquisition of a dwelling:

(1) Purchase and installation of essential household equipment in the dwelling such as wall-to-wall carpeting, ovens, ranges, refrigerators, washing machines, clothes dryers, heating and cooling equipment, and other similar items as long as the equipment is conveyed with the dwelling and such items are typically included in the purchase of similar dwellings in the area.

(2) Purchase and installation of energy-saving measures.

(3) Site preparation including grading, foundation, plantings, seeding or sodding, trees, walks, fences, and driveways to the home.

(4) A supplemental loan to provide funds for seller equity or essential repairs when an existing guaranteed loan is assumed simultaneously.

(5) Special design features or equipment when necessary because of a physical disability of the applicant or a member of the household.

(6) Loan funds may be used to pay for reasonable and customary expenses related to obtaining the loan. Allowable loan expenses include:

(i) Legal, architectural, and engineering fees;

(ii) Title exam, title clearance and title insurance;

(iii) Transfer taxes and recordation fees;

(iv) Appraisal, property inspection, surveying, environmental, tax monitoring, and technical services;

(v) Homeownership education.

(vi) For low-income borrowers only, reasonable and customary loan discount points to reduce the note interest rate from the rate authorized in § 3555.104(a).

(vii) Reasonable and customary non-recurring closing costs associated with the mortgage transaction that do not exceed those charged other applicants by the lender for similar transactions such as FHA-insured or VA-guaranteed first mortgage loans. If the lender does not participate in such programs, the loan closing costs may not exceed those charged other applicants by the lender for a similar loan program that requires conventional mortgage insurance or guarantee. Allowable closing costs include the actual cost of credit reports, the loan origination fee, settlement fee, deposit verification fees, document preparation fees (if performed by a third party not controlled by the lender), and other reasonable and customary costs as determined by Rural Development. Payment of finder's fees or placement fees for the referral of an applicant to the lender is prohibited.

(viii) Reasonable connection fees, assessments, or the pro rata installment costs for utilities such as water, sewer, electricity and gas for which the borrower is responsible.

(ix) The prorated portion of real estate taxes that is due and payable on the property at the time of closing and to establish escrow accounts for real estate taxes, hazard and flood insurance premiums, and related costs.

(x) The amount of the loan up-front guarantee fee required by § 3555.107(h).

(xi) The cost of establishing a cushion in the mortgage escrow account for payment of the annual fee required by § 3555.108(g), not to exceed 2 months.

(xii) If the seller or other third party pays any of the costs described in this section, the amount of the costs paid by the seller or other third party may not be included in the loan amount to be guaranteed.

(c) *Combination construction and permanent loan.* Loan funds may be

used and Rural Development will guarantee a ''combination construction and permanent loan'' as defined at § 3555.10, during the term of construction and prior to the borrower occupying the property, subject to the conditions in § 3555.105.

(d) *Refinancing.* Refinancing is permitted only in the following situations:

(1) The loan may be used for permanent financing when temporary financing to construct a new dwelling, or to purchase and improve an existing dwelling, is arranged as a part of the loan package.

(2) In the case of loans for a site on which a dwelling is not constructed prior to issuance of the Loan Note Guarantee, refinancing is permitted if:

(i) The site is free and clear of debt;

(ii) The debt to be refinanced was incurred for the sole purpose of purchasing the site;

(iii) The applicant is unable to acquire adequate housing without refinancing; and

(iv) An appropriate dwelling will be constructed on the site.

(3) The loan is a present Section 502 Direct or guaranteed loan, authorized under the Housing Act of 1949 subject to the following additional requirements:

(i) The interest rate of the new loan must be fixed. The rate of the new loan must be at least 100 basis points below the original rate of the loan refinanced.

(ii) The loan security must include the same property as the original loan and be owned and occupied by the borrowers as their principal residence.

(iii) Existing borrowers seeking to refinance must have demonstrated their ability to meet payment demands by maintaining a current account for the 180 days prior to application.

(iv) Borrowers may be added to or deleted from a refinance transaction. At least one of the borrowers (primary or co-borrower(s)) must remain to qualify as a refinance transaction. All applicants who will be a party to the note must meet eligibility requirements.

(v) The maximum loan amount cannot exceed the balance of the loan being refinanced including accrued interest, the guarantee fee, and reasonable and customary closing costs. When a direct loan is refinanced, any recapture amount owed may be included in the loan amount or deferred as long as the recapture amount takes a subordinate lien position to the new SFHGLP loan. A discount on the recapture amount may be offered if the borrower does not defer recapture or includes the recapture amount in the new loan.

(vi) Two options for refinancing can be offered. Lenders may offer a streamlined refinance for existing Section 502 Guaranteed loans, which does not require a new appraisal. Streamlined financing may not be available for existing Section 502 Direct loans. The lender will pay off the balance of the existing Section 502 Guaranteed loan. The new loan amount cannot include any closing costs or lender fees. The refinance up-front guarantee fee as established by the Agency can be included in the loan to be refinanced to the extent financing does not exceed the original loan amount. Lenders may offer non-streamlined refinancing for existing Section 502 Guaranteed or Direct loans, which requires a new and current market value appraisal. The new loan may include the principal and interest of the existing Agency loan, reasonable closing costs and lenders fees to extent there is sufficient equity in the property as determined by an appraisal. The appraised value may be exceeded by the amount of up-front guarantee fee financed, if any, when using the non-streamlined option. Documentation, costs, and underwriting requirements of subparts D, E, and F of this part apply to refinances.

(vii) Lenders may require property inspections and/or repairs as a condition to loan approval. Expenses related to property inspections and repairs required of the lender may not be financed into the new loan amount.

(viii) The lender pays a guarantee fee as established by the Agency.

(ix) The refinance loan may be subject to an annual fee as established by the Agency; and

(x) The Agency may limit the number of guaranteed loans made for refinancing purposes based on market conditions and other appropriate factors.

§ 3555.102 Loan restrictions.

A guarantee will not be issued if loan funds are to be used for:

(a) *Existing manufactured homes.* Purchase of an existing manufactured home, except as provided in § 3555.208(b)(3);

(b) *Income producing land or buildings.* Purchase or improvement of land or buildings that are typically used principally for income-producing purposes;

(c) *Business or income-producing enterprise.* Purchase or the construction of buildings which are largely or in part specifically designed to accommodate a business or income-producing enterprise;

(d) *Loan discount points.* Loan discount points, except as provided in § 3555.101(b)(6)(vi);

(e) *Refinancing.* Refinancing, except as provided in § 3555.101(d);

(f) *Buydown.* Establishing a buydown account;

(g) *Lease.* Payments on a lease; or

(h) *Seller concessions.* Purchasing a home if the seller, or other interested third party, contributes more than 6 percent, unless otherwise provided by the Agency, of the property's sales price toward the purchaser's mortgage financing costs, closing costs, escrow accounts, furniture or other giveaways.

§ 3555.103 Maximum loan amount.

The amount of the loan must not exceed the lesser of:

(a) *Market value.* The market value of the property as determined by an appraisal that meets Agency requirements plus the amount of the up-front loan guarantee fee required by § 3555.107(f), or

(b) *Purchase price and acquisition costs.* The total of the purchase price and all eligible acquisition costs as permitted by § 3555.101.

(c) *Newly constructed dwelling—limited to 90 percent.* A newly constructed dwelling that does not meet the definition of an existing dwelling, as defined at § 3555.10, and cannot meet the inspection and warranty requirements of § 3555.202(a) of this subpart is limited to 90 percent of the present market value. The dwelling must meet or exceed the International Energy Conservation Code (IECC) in effect at the time of construction.

§ 3555.104 Loan terms.

(a) *Interest rate.* The loan must be written at an interest rate that:

(1) Is fixed over the term of the loan;

(2) Shall be negotiated between the lender and borrower to allow the borrower to obtain the best available rate available;

(3) Does not exceed the greater of the Fannie Mae or Freddie Mac rate for 30 year fixed rate conventional loans, as authorized in Exhibit B of subpart A of part 1810 of this chapter (RD Instruction 440.1, available in any Rural Development office) or online at: *http://www.rurdev.usda.gov/rd_instructions.html* and

(4) If the interest rate increases between the time of the issuance of the conditional commitment and the loan closing, the lender will note the change in the loan closing package and submit appropriate updated documentation and underwriting analysis to confirm that the applicant is still eligible.

(b) *Repayment period.* The term of the loan may not exceed 30 years.

Adjustable rate mortgages, balloon term mortgages or mortgages requiring prepayment penalties are ineligible terms.

(c) *Repayment schedule.* Amortized payments will be due and payable monthly.

(d) *Negative amortization.* The loan note must not provide for interest on interest.

§ 3555.105 Combination construction and permanent loans.

Guarantees of combination construction and permanent loans are subject to the following conditions:

(a) *Lender requirements.* In addition to other lender requirements of this part, lenders seeking guarantees of combination construction and permanent loans must:

(1) Have two or more years experience making and administering construction loans.

(2) Submit an executed construction contract with each loan application package.

(3) Review and approve construction contractors or builders. The lender will conduct due diligence investigations to determine that the contractor or builder meets the minimum requirements in paragraph (b) of this section. Evidence of the contractor or builder's compliance must be made available by the lender upon request of the Agency.

(4) Close the loan prior to the start of construction with proceeds disbursed to cover the cost of, or balance owed on, the land and the balance into escrow.

(5) Pay out monies from escrow to the builder during construction. The lender must obtain written approval from the borrower before each draw payment is provided to the builder. The borrower and lender are jointly responsible for approving disbursements during the construction phase. The lender must ensure that the appropriate work has been completed prior to releasing each draw. The Agency may require the lender to submit a draw and disbursement ledger for any loan guarantee upon request.

(6) Obtain documentation that confirms the construction of the subject property is complete.

(b) *Contractor or builder requirements.* Contractors or builders of homes financed with guaranteed combination construction and permanent loans must at least have:

(1) Two or more years experience building or constructing all aspects of single family dwellings similar to the type of project being proposed;

(2) State-issued construction or contractor licenses, as required by State or local law;

(3) Insurance for commercial general liability of at least $500,000;

(4) Acceptable credit histories free of judgments, collections, or liens related to previous projects the contractor was involved with in the past;

(5) No criminal history based on a criminal background check conducted by the lender;

(6) Limited to 25 units per year unless approved by the Agency; and

(7) Contractors or builders who are constructing their own residence are ineligible.

(c) *Use of loan funds.* (1) The loan is to finance the construction and purchase of a single family housing residence. Condominiums and manufactured homes are ineligible for combination construction and permanent loans.

(2) The loan amount may include:

(i) The price of the lot.

(ii) Reasonable and customary construction costs related to the construction administration, such as architectural and engineering fees, building permits and fees, surveys, title updates, contingency reserves, not exceeding a percentage specified by the Agency of the cost of construction, draw control and inspection fees, builder's risk insurance or course of construction insurance, and landscaping costs;

(iii) Reasonable and customary closing costs as defined at § 3555.101; and

(3) Funds remaining after full disbursement of construction costs will be applied by the lender as a principal payment. Borrowers are not to receive funds after closing except that the borrower may receive funds remaining from certain unused prepaid expenses if the borrower used personal, non-loan funds to pay those expenses.

(d) *Terms.* The following terms apply to guarantees of combination construction and permanent loans:

(1) The interest rate for the construction and permanent loan will be established in accordance with § 3555.104 at the time the rate is locked, which must occur prior to closing.

(2) The fair market value of the proposed property to be constructed will be used to establish the maximum loan amount.

(3) Annual guarantee fees will begin in the month immediately following loan closing and will not be affected by loan reamortization following the completion of construction. Lenders may fund a lender imposed escrow account for borrower payment of the annual fee in accordance with § 3555.101(b)(6)(xi), as an eligible loan purpose, provided the market value of the property is not exceeded.

(4) Interest on the construction loan is payable monthly either directly from the borrower or indirectly drawn from an established interest reserve. Real estate taxes and property insurance due during the construction period may also be paid using the same draw process. The annual fee will be due and payable from the lender on the 1st of the month following the anniversary date the construction to permanent loan closed.

(5) Initial payment of the regularly scheduled (amortized) principal and interest payment may be postponed up to one year, if necessary, based upon the construction period. Local conditions and the proposed construction contract may dictate the term.

(6) The loan will be modified and re-amortized to achieve full repayment within its remaining term once construction is complete. Within a reasonable time, as specified by the Agency, after the final inspection, the borrower will begin making regularly scheduled (amortized) principal and interest payments once the loan is re-amortized.

(e) *Mortgage file documentation.* Standard industry credit and verification documents may be utilized when processing and closing the loan and must be dated within a reasonable time, specified by the Agency, of the closing in order to be considered valid. In addition to documentation noted at § 3555.202(a), lenders must obtain and retain evidence:

(1) The actual cost to construct the subject dwelling;

(2) The acquisition, transfer of ownership, and/or ownership of land;

(3) Certification of construction completion and that construction costs have been fully drawn;

(4) Closing costs;

(5) Certification that property is free and clear of all other liens after conversion to permanent loan;

(6) Required inspections and warranties; and

(7) Loan modification agreement when construction is complete confirming the existence of the permanent loan and the amortizing interest rate on the loan.

(f) *Loan Note Guarantee.* The Loan Note Guarantee will be issued after closing of the construction loan without waiting for complete construction of the subject property upon:

(1) Request by the approved lender;

(2) The lender's submission of the closing documentation acceptable to Rural Development demonstrating that the loan was properly closed;

(3) Payment of the guarantee fee; and

(4) The lender's compliance with other requirements under § 3555.107.

(g) *Unplanned changes during construction.* Should an unplanned change occur with the borrower or contractor preventing completion of construction, the lender remains responsible for completion of improvements satisfactory to Rural Development. The loan will be serviced in accordance with subparts F and G of this part.

(h) *Reservation of funding.* Rural Development reserves the right to limit the number or amount of loans guaranteed under this section based on market conditions and other factors it considers appropriate, such as loan and portfolio performance.

§ 3555.106 [Reserved]

§ 3555.107 Application for and issuance of the loan guarantee.

(a) *Processing of applications.* Except as provided in this section, Rural Development will process loan guarantee applications in the order that completed applications are received. Application forms and instruction procedures are available at any Rural Development office.

(1) If analysis of the utilization of funds during the fiscal year indicates that, at the rate of current utilization, funds may not be sufficient to sustain that level of activity for the remainder of the fiscal year, the Agency may determine a shortage of funds exists.

(2) When there is a shortage of funds, the Agency will limit SFHGLP loans to first-time homebuyers or veterans. First-time homebuyers and veterans will be served in the order their applications are received.

(b) *Automated underwriting.* Rural Development will offer approved lenders an automated system, if available; to process Rural Development guaranteed loans under this part. The automated underwriting system is a tool to help evaluate credit risk, but does not substitute or replace the careful judgment of experienced underwriters, and shall not be the exclusive basis for a determination on whether to extend credit. The lender must apply for and receive approval from Rural Development to utilize the automated underwriting system. Application forms are available from Rural Development. Lenders using the automated underwriting system shall do so in accordance with SFHGLP regulations and guidelines. Rural Development reserves the right to terminate the lender's use of the automated underwriting system.

(1) Lenders who utilize the Rural Development automated underwriting system remain responsible for ensuring all data is true and accurately represented.

(2) Full documentation and verification, in accordance with Subparts C, D and E of this part, will be retained in the lender's permanent loan file and must confirm the applicant's eligibility, creditworthiness, repayment ability, eligible loan purpose, sufficient collateral, and all other regulatory requirements.

(3) Lenders who utilize the Rural Development automated underwriting system will be subject to indemnification requirements in accordance with § 3555.108.

(4) If a loan receives an ''Accept'' underwriting recommendation, the lender is generally permitted to submit minimal documentation including the appraisal, flood hazard determination and fully executed request for guarantee, unless the lender is instructed to provide other documentation.

(5) Loan requests that receive a ''Refer'' or ''Refer with Caution'' underwriting recommendation require further review and manual underwriting by the lender to determine whether the applicant meets SFHGLP eligibility requirements.

(6) Lenders who utilize Rural Development's automated underwriting system will validate findings, based upon the output report of the underwriting system.

(7) The final submission of the last scoring event must be retained in the lender's permanent loan file.

(c) *Manual underwriting.* Lenders may utilize a manual underwriting method. Full documentation and verification, in accordance with Subparts C, D and E of this part will be submitted to Rural Development when requesting a guarantee and maintained in the lender's file. The documentation will confirm the applicant's eligibility, creditworthiness, repayment ability, eligible loan purpose, adequate collateral, and satisfaction of other regulatory requirements.

(d) *Appraisals.* The lender must supply a current appraisal report of the property for which the guarantee is requested.

(1) Appraisals must be conducted in accordance with the Uniform Standards of Professional Appraisal Practices.

(2) Approved lenders are responsible for selecting a qualified appraiser and the integrity, accuracy and thoroughness of the appraisals used to support their loan guarantee request.

(3) The appraiser must report all readily observable property deficiencies, potential environmental hazards, as well as any adverse conditions discovered performing the research involved in completing the appraisal.

(4) The Agency will conduct reviews of the appraisals prior to issuance of the conditional commitment, and other reviews may be conducted to ensure overall quality of appraisals. The lender is responsible for correcting any appraisal deficiencies reported by the Agency.

(5) The Agency may determine an appraiser ineligible to conduct appraisals for SFHGLP due to the failure to comply with applicable requirements and regulations. Appraisals from the ineligible appraisers will not be accepted.

(6) Use of an alternative approach to value for appraisals performed in remote rural areas, on tribal lands, or where a lack of market activity exists may be accepted at the Agency's discretion.

(7) The validity period of an appraisal will be 120 days, unless otherwise provided by the Agency.

(e) *Environmental requirements.* The lender and Rural Development will meet all environmental responsibilities in accordance with § 3555.5.

(f) *Issuance of a conditional commitment.* The lender must demonstrate that all the general loan, applicant, and site eligibility requirements of this part are met before Rural Development will issue a conditional commitment. The lender, however, may obtain any required property inspection reports, such as a well test or construction phase inspections, if applicable and not needed for environmental compliance, after the issuance of the conditional commitment, but prior to loan closing.

(1) The conditional commitment will expire in 90 days from issuance, unless new construction is involved.

(2) The expiration of a conditional commitment may coincide with projected completion of new construction.

(3) An extension may be granted if the loan cannot be closed due to circumstances beyond the lender's control.

(4) Lenders may accept or decline the conditional commitment, or submit requests for changes with adequate support and documentation to be reviewed by the Agency.

(g) *Loan guarantee fee.* The lender must pay a nonrefundable up-front guarantee fee, the cost of which may be passed on to the borrower. The up-front guarantee fee will not exceed 3.5 percent of the principal obligation. The current guarantee fee is available at any Rural Development office and may change periodically. Notice of a change

in fee will be published as authorized in Exhibit K of subpart A of part 1810 of this chapter (RD Instruction 440.1, available in any Rural Development office) or online at: *http://www.rurdev.usda.gov/rd_instructions.html.* Once the guarantee has been issued, the fee will not be refunded.

(h) *Annual fee.* The Agency may impose an annual fee of the lender not to exceed 0.5 percent of the average annual scheduled unpaid principal balance of the loan for the life of the loan to allow the Agency to reduce the up-front guarantee in § 3555.107(g). The annual fee will be applicable to purchase and refinance loan transactions. The annual fee may be passed on to the borrower by the lender. The Agency may assess a late charge to the lender if the annual fee is not paid by the due date, and the late charge may be passed on to the borrower. Further administrative guidance is provided in the handbook.

(i) *Proper closing and requesting the loan note guarantee.* The lender must ensure that any loan to be guaranteed is properly closed using documents acceptable to Rural Development.

(1) Within 30 days of loan closing, the lender must request issuance of a loan guarantee.

(2) The lender will certify the loan was closed in accordance with the conditional commitment and that no major changes have taken place since issuance of a commitment, except any changes specifically approved by the Agency.

(3) The lender will maintain evidence of hazard insurance and, if applicable, flood insurance.

(4) Evidence of documentation supporting the properly closed loan may be submitted to the Agency through regular mail, express mail, facsimile or secure email. Rural Development may offer approved lenders an automated method of submitting properly closed loans.

(5) Lenders will submit full documentation supporting a closed loan or evidence of self-certification status, as described in this section. Self-certified lenders must still submit the settlement statement and promissory note. Lenders must obtain written authorization from the Agency prior to submitting evidence of self-certification in lieu of full documentation. Authorization for self-certification may be granted by the Agency if:

(i) The lender has an active lender agreement.

(ii) The lender is actively engaged in originating SFHGLP loans and has closed a minimum of 10 loans in the past 12 months.

(iii) The lender has successfully submitted 10 consecutive loan closing to the Agency that were in compliance with loan closing requirements and procedures.

(iv) The lender agrees to retain evidence of confirmed closing conditions in accordance with the issued conditional commitment in the lender's permanent loan file.

(j) *Issuance of the guarantee.* The loan guarantee does not take effect until:

(1) The lender transmits the required up-front guarantee fee, the lender certification form provided by Rural Development, and loan closing documents to Rural Development;

(2) The lender meets all other conditions set out in the conditional commitment;

(3) The loan is current at the time the lender requests the loan guarantee;

(4) Any construction or rehabilitation, is complete except for development described in §§ 3555.101(c) and 3555.202(c); and

(5) Rural Development issues the loan guarantee document.

§ 3555.108 Full faith and credit.

(a) *General.* The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time it becomes such lender or which the lender participates in or condones. Misrepresentation includes negligent misrepresentation.

(b) *Interest.* A note that provides for the payment of interest on interest, however, shall not be guaranteed. If the note to which the Loan Note Guarantee is attached or relates provides for the payment of interest on interest, then the Loan Note Guarantee is void. Notwithstanding the prohibition of interest on interest, interest may be capitalized in connection with re-amortization under subpart G of this part.

(c) *Violations.* The Loan Note Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, civil rights laws, negligent servicing, failure to obtain the required security or use of loan funds for unauthorized purposes, regardless of the time at which Rural Development acquires knowledge of the foregoing. Negligent servicing is defined as servicing that is inconsistent with this subpart and includes the failure to perform those services which a reasonably prudent Lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner or acting contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

(d) *Indemnification.* If the Agency determines that a lender did not originate a loan in accordance with the requirements in this part and the Agency pays a claim under the loan guarantee, the Agency may revoke the lender's eligibility status in accordance with subpart B of this part and may also require the lender:

(1) To indemnify the Agency for the loss, if the payment under the guarantee was made within 24 months of loan closing; or:

(2) To indemnify the Agency for the loss regardless of how long ago the loan closed, if the Agency determines that fraud or misrepresentation was involved in connection with the origination of the loan.

§§ 3555.109–3555.149 [Reserved]

§ 3555.150 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

Subpart D—Underwriting the Applicant

§ 3555.151 Eligibility requirements.

(a) *Income eligibility.* At the time of loan approval, the household's adjusted income must not exceed the applicable moderate income limit. The lender is responsible for documenting the household's income to determine eligibility for the SFHGLP.

(b) *Citizenship status.* Applicants must provide evidence acceptable to the Agency of their status as United States citizens, U.S. non-citizen nationals, or qualified aliens, as defined in § 3555.10.

(c) *Principal residence.* Applicants must agree and have the ability to occupy the dwelling as their principal residence. The Agency may require evidence of this ability. Rural Development will not guarantee loans for investment properties, or temporary, short-term housing.

(d) *Adequate dwelling.* The dwelling must be modest, decent, safe, and sanitary.

(e) *Eligibility of current homeowners.* Current homeowners may be eligible for guaranteed home loans under this part if all the following conditions are met:

(1) The applicants are not financially responsible for another Agency guaranteed or direct home loan by the

time the guaranteed home loan is closed;

(2) The current home no longer adequately meets the applicants' needs;

(3) The applicants will occupy the home financed with the SFHGLP loan as their primary residence;

(4) The applicants are without sufficient resources or credit to obtain the dwelling on their own without the guarantee;

(5) No more than one single family housing dwelling other than the one associated with the current loan request may be retained; and

(6) The applicants must be financially qualified to own more than one home. In order for net rental income from the retained dwelling to be considered for the applicant's repayment ability, the consistency of the rental income must be demonstrated for at least the previous 24 months, and the current lease must be for a term of at least 12 months after the loan is closed.

(f) *Legal capacity.* Applicants must have the legal capacity to incur the loan obligation, or have a court-appointed guardian or conservator who is empowered to obligate the applicant in real estate matters.

(g) *Suspension or debarment.* Applicants who are suspended or debarred from participation in Federal programs under 2 CFR parts 180 and 417 are not eligible for loan guarantees.

(h) *Repayment ability.* Applicants must demonstrate adequate repayment ability. Lenders must maintain documentation supporting the repayment ability analysis in the loan file. Refer to § 3555.152(a) for further information.

(1) A repayment ratio will be used to determine an applicant's ability to repay a loan. The Agency will utilize two ratios, principal, interest, taxes and insurance (PITI) ratio and total debt (TD) ratio, to determine adequate repayment for the requested loan. The Agency reserves the right to consider calculation of a single ratio in determining repayment for the requested loan.

(i) An applicant is considered to have adequate repayment ability when the monthly amount required for payment of PITI, homeowners' association dues, the monthly calculation of an annual fee, as applicable, and other real estate assessments does not exceed 29 percent of the applicant's repayment income and the monthly amount of PITI plus recurring monthly debts (total debt) does not exceed 41 percent of the applicant's repayment income.

(ii) For home purchases under the Rural Energy Plus provision of § 3555.209, the Agency reserves the right to allow flexibility in the PITI and TD ratio. The handbook will define what flexibilities can be extended.

(iii) Contributions to personal income taxes, retirement accounts (including the repayment of personal loans from those retirement accounts), savings (including repayment of loans secured by such funds), the cost to commute, membership fees in unions or like organizations, childcare or other voluntary obligations will not be considered in the TD ratio.

(iv) Except for obligations specifically excluded by State law, the debts of non-purchasing spouse must be included in the applicant's repayment ratios if the applicant resides in a community property state.

(2) The repayment ratio may exceed the percentage specified in paragraph (h)(1) of this section if certain compensating factors exist. The handbook will define when a debt ratio may be granted. The automated underwriting system will take into account any compensating factors in determining whether the variance is appropriate. For manually underwritten loans, the lender must document compensating factors demonstrating that the household has higher repayment ability based on its capacity, willingness and ability to pay mortgage payments in a timely manner. The presence of compensating factors does not strengthen a ratio exception when multiple layers of risk, such as a marginal credit history, are present in the application. Acceptable compensating factors and supporting documentation for a proposed debt ratio waiver will be further defined and clarified in the handbook. Compensating factors include, but are not limited to:

(i) A credit score at an acceptable level of 680 or higher for any applicants, unless otherwise provided by the Agency. The Agency reserves the right to change the acceptable level of credit score.

(ii) A minimal increase in housing expense, i.e. the current rent payment is comparable to the proposed mortgage loan payment PITI and if applicable, homeowner association dues.

(iii) The demonstrated ability to accumulate savings and cash reserves post loan closing.

(iv) Continuous employment with a current primary employer.

(3) Loan ratio exceptions require written approval by Rural Development, or acceptance by an Agency approved automated underwriting system. Flexibilities surrounding loan ratio exceptions will be further clarified in the handbook. Lenders with loans accepted by an Agency approved automated underwriting system need not submit documentation for the need for a ratio waiver.

(4) If an applicant does not meet the repayment ability requirements, the applicant can increase repayment ability by having other eligible household members join the application.

(5) Mortgage Credit Certificates may be considered in determining an applicant's repayment ability.

(6) Section 8 Homeownership Vouchers may be used in determining an applicant's repayment ability. The monthly subsidy may be treated as repayment income in accordance with § 3555.152(a) or offset in the PITI.

(7) A funded buydown account may be used to reduce the borrower's monthly mortgage payment during the early years of repayment when all of the following requirements are met:

(i) The loan will be underwritten at the note rate.

(ii) The interest rate may be bought down to no more than 2 percentage points below the note rate.

(iii) The interest rate paid by the borrower may increase no more frequently than annually.

(iv) The interest rate paid by the borrower may increase no more than 1 percentage point annually.

(v) Funds must be placed in an escrow account with monthly releases scheduled directly to the lender.

(vi) Funds must be placed with a Federal- or state-regulated lender.

(vii) The escrow account must be fully funded for the buydown period.

(viii) The borrower is not permitted to use personal funds or funds borrowed from another source to establish the escrow account for the buydown.

(ix) The borrower must not be required to borrow or repay the funds.

(i) *Credit qualifications.* Applicants generally must have a verifiable credit history that indicates a reasonable ability and willingness to meet their debt obligations as evidenced by an acceptable credit score, a credit report from a recognized credit repository meeting the requirements of Fannie Mae, Freddie Mac, FHA or VA, and other credit qualifications satisfactory to Rural Development.

(1) Except as provided in paragraph (i)(6) of this section, the applicant's credit history must demonstrate a past willingness and ability to meet credit obligations to enable the lender to evaluate each applicant and draw a logical conclusion about the applicant's commitment and ability to handling financial obligations successfully and ability to make payments on the new mortgage obligation.

(2) Loans acceptance by an Agency approved automated underwriting system eliminates the need for the lender to submit documentation of the credit qualification decision as loan approval requirements will be incorporated in the automated system.

(3) For manually underwritten loans, lenders must submit documentation of the credit qualification decision. Lenders will use credit scores to manually underwrite loan mortgage requests. Lenders are required to validate the credit scores utilized in the underwriting determination. Indicators of significant derogatory credit will require further review and documentation of that review. Indicators of significant derogatory credit include, but are not limited to:

(i) A foreclosure that has been completed in the 36 months prior to application by the applicant.

(ii) A bankruptcy in which debts were discharged within 36 months prior to the date of application by the applicant. Applicants who have completed a bankruptcy debt restructuring plan must have completed the plan and demonstrated a willingness to meet obligations when due for greater than the 12 months prior to the date of application by the applicant.

(iii) One rent or mortgage payment paid 30 or more days late within the last 12 months prior to application by the applicant.

(iv) A previous Agency loan that resulted in a loss to the Government.

(4) When evidence of significant derogatory credit is present, lenders may consider extenuating circumstances, including but not limited to, whether the problems were caused by factors temporary in nature, if the circumstances leading to the derogatory credit were beyond the control of the applicant, and if the loan would significantly reduce the applicant's housing expenses.

(5) In all cases, the applicant cannot have an outstanding Federal judgment, other than a judgment obtained in the United States Tax Court, or a delinquent non-tax Federal debt that has not been paid in full or otherwise satisfied.

(6) For applicants without an established credit history, alternative methods may be used to evidence an applicant's willingness to pay, such as a non-traditional mortgage credit report or multiple independent verifications of trade references.

(7) A credit report for a non-purchasing spouse must be obtained in order to determine the debt-to-income ratio referenced at § 3555.151(h) if the applicant resides in a community property state.

(8) Lenders are encouraged to offer or provide for home ownership counseling. Lenders may require first-time homebuyers to undergo such counseling if it is reasonably available in the local area. When home ownership counseling is provided or sponsored by Rural Development or another Federal agency in the local area, the Lender must require the borrower to successfully complete the course.

(j) *Obtaining credit.* The applicant must be unable to obtain traditional conventional mortgage credit, as defined by the Agency, for the subject loan.

§ 3555.152 Calculation of income and assets.

The lender must obtain and maintain documentation in the loan file supporting the lender's determination of all income and assets described in this section.

(a) *Repayment income.* Repayment income is the amount of adequate and stable income from all sources that parties to the promissory note are expected to receive. Repayment income is used to determine the applicant's ability to repay a loan.

(1) The lender must examine the applicant's past income record for at least the past 2 years and any applicable training and/or education. The Agency may require additional information and documentation from self-employed applicants and applicants employed by businesses owned by family members.

(2) The lender must establish an applicant's anticipated amount of repayment income and the likelihood of its continuance for at least the next 3 years to determine an applicant's capacity to repay a requested mortgage loan in accordance with § 3555.151(h)(1).

(3) Income may not be used in calculating an applicant's ratios if it is from any source that cannot be verified, is not stable, or is likely not to continue.

(4) The following types of income are examples of income not included in repayment income:

(i) Any student financial aid received by household members for tuition, fees, books, equipment, materials, and transportation;

(ii) Amounts received that are specifically for, or in reimbursement of the cost of medical expenses for any family member;

(iii) Temporary, nonrecurring, or sporadic income (including gifts);

(iv) Lump sum additions to family assets such as inheritances, capital gains, insurance payments and personal or property settlements;

(v) Payments for the care of foster children or adults; and

(vi) Supplemental Nutrition Assistance Program payments.

(b) *Annual income.* Annual income is the income of all household members, regardless of whether they will be parties to the promissory note.

(1) Applicants must provide the income, expense and household information necessary to enable the lender to make income determinations.

(2) Lenders must verify employment and income information provided by the applicant for all household members. Lenders will verify the income for each adult household member for the previous 2 years. Written or oral verifications provided by third-party sources or documents prepared by third-party sources are acceptable. Lenders must project the expected annual income for the next 12 months from the verified sources.

(3) The lender remains responsible for the quality and accuracy of all information used to establish a household's eligibility.

(4) Household income from all sources including, but not limited to, income from temporarily absent household members, allowances for tax-exempt income and net family assets as defined in paragraph (d) of this section are to be considered in the calculation of annual income.

(5) The following sources of income will not be considered in the calculation of annual income:

(i) Earned income of persons under the age of 18 unless they are an applicant or a spouse of a member of the household;

(ii) Payments received for the care of foster children or foster adults and incomes received by foster children or foster adults who live in the household;

(iii) Amounts granted for, or in reimbursement of, the cost of medical expenses;

(iv) Earnings of each full-time student 18 years of age or older, except the head of household or spouse, that are in excess of any amount determined pursuant to HUD definition of annual income at 24 CFR 5.609(c);

(v) Temporary, nonrecurring, or sporadic income (including gifts);

(vi) Lump sum additions to family assets such as inheritances; capital gains; insurance payments under health, accident, or worker's compensation policies; settlements for personal or property losses; and deferred periodic payments of supplemental social security income and Social Security benefits received in a lump sum;

(vii) Any earned income tax credit;

(viii) Adoption assistance in excess of any amount determined pursuant to

HUD's definition of annual income at 24 CFR 5.609(c);

(ix) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling;

(x) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home;

(xi) The full amount of any student financial aid;

(xii) Any other revenue exempted by a Federal statute, a list of which is available from any Rural Development office;

(xiii) Income received by live-in aides, regardless of whether the live-in aide is paid by the family or a social service program;

(ix) Employer-provided fringe benefit packages unless reported as taxable income; and

(x) Amounts received through the Supplemental Nutrition Assistance Program.

(c) *Adjusted annual income.* Adjusted annual income is used to determine program eligibility and is annual income as defined in paragraph (b) of this section, less any of the following verified deductions for which the household is eligible.

(1) A reduction for each family member, except the head of household or spouse, who is under 18 years of age, 18 years of age or older with a disability, or a full-time student, the amount of which will be determined pursuant to HUD definition of adjusted income at 24 CFR 5.611.

(2) A deduction of reasonable expenses for the care of a child 12 years of age or under that:

(i) Enables a family member to work, to actively seek work, or to further a member's education;

(ii) Are not reimbursed or paid by another source; and

(iii) In the case of expenses to enable a family member to work, do not exceed the amount of income, including the value of any health benefits, earned by the family member enabled to work. If the child care provider is a household member, the cost of the children's care cannot be deducted.

(3) A deduction of reasonable expenses related to the care of household members with disabilities that:

(i) Enable a family member or the individual with disabilities to work, to actively seek work, or to further a member's education;

(ii) Are not reimbursed from insurance or another source; and

(iii) Are in excess of 3 percent of the household's annual income and do not exceed the amount of earned income included in annual income by the person who is able to work as a result of the expenses.

(4) For any elderly family, a deduction in the amount determined pursuant to HUD definition of adjusted income at 24 CFR 5.611.

(5) For elderly and disabled families only, a deduction for household medical expenses that are not reimbursed from insurance or another source and which, in combination with any expenses related to the care of household members with disabilities described in paragraph (c)(3) of this section, are in excess of 3 percent of the household's annual income.

(d) *Net family assets.* For the purpose of computing annual income, the net family assets of all household members must be included in the calculation of annual income. Lenders must document and verify assets of all household members.

(1) Net family assets include, but are not limited to, the actual or imputed income from:

(i) Equity in real property or other capital investments, other than the dwelling or site;

(ii) Cash on hand and funds in savings or checking accounts;

(iii) Amounts in trust accounts that are available to the household;

(iv) Stocks, bonds, and other forms of capital investments that is accessible to the applicant without retiring or terminating employment;

(v) Lump sum receipts such as lottery winnings, capital gains, and inheritances;

(vi) Personal property held as an investment; and

(vii) Any value, in excess of the consideration received, for any business or household assets disposed of for less than fair market value during the 2 years preceding the income determination. The value of assets disposed of for less than fair market value shall not be considered if they were disposed of as a result of foreclosure, bankruptcy, or a divorce or separation settlement.

(2) Net family assets for the purpose of calculating annual income do not include:

(i) Interest in American Indian restricted land;

(ii) Cash on hand which will be used to reduce the amount of the loan;

(iii) The value of necessary items of personal property;

(iv) Assets that are part of the business, trade, or farming operation of any member of the household who is actively engaged in such operation;

(v) Amounts in voluntary retirement plans such as individual retirement accounts (IRAs), 401(k) plans, and Keogh accounts (except at the time interest assistance is initially granted);

(vi) The value of an irrevocable trust fund or any other trust over which no member of the household has control;

(vii) Cash value of life insurance policies; and

(viii) Other amounts deemed by the Agency not to constitute net family assets.

§§ 3555.153–3555.199 [Reserved]

§ 3555.200 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

Subpart E—Underwriting the Property

§ 3555.201 Site requirements.

(a) *Rural areas.* Rural Development will only guarantee loans made in rural areas designated as rural by Rural Development. However, if a rural area designation is changed to nonrural:

(1) Existing conditional commitments in the former rural area will be honored;

(2) A supplemental loan may be made in accordance with § 3555.101 in conjunction with a transfer and assumption of a guaranteed loan;

(3) Loan requests where the application and purchase contract was complete prior to the area designation change may be approved; and

(4) REO property sales and transfers with assumption may be processed.

(b) *Site standards.* Sites must be modest and developed in accordance with any standards imposed by a State or local government and must meet all of the following requirements.

(1) The site size must be typical for the area.

(2) The site must not include income-producing land or buildings to be used principally for income-producing purposes. Vacant land without eligible residential improvements, or property used primarily for agriculture, farming or commercial enterprise is ineligible for a loan guarantee.

(3) The site must be contiguous to and have direct access from a street, road, or driveway. Streets and roads must be hard surfaced or all weather surfaced and legally enforceable arrangements must be in place to ensure that needed maintenance will be provided.

(4) The site must be supported by adequate utilities and water and wastewater disposal systems. Certain water and wastewater systems that are privately-owned may be acceptable if

the lender determines that the systems are adequate, safe, compliant with applicable codes and requirements, and the cost or feasibility to connect to a public or community system is not reasonable. Certain community-owned water and wastewater systems may be acceptable if the lender determines that the systems are adequate, safe, and compliance with applicable codes and requirements. The Agency may require inspections on individual, central, or privately-owned and operated water or waste systems.

§ 3555.202 Dwelling requirements.

(a) *New dwellings.* New dwellings must be constructed in accordance with certified plans and specifications, and must meet or exceed the International Energy Conservation Code (IECC) in effect at the time of construction. The lender must obtain and retain evidence of construction costs, inspection reports, certifications, and builder warranties acceptable to Rural Development.

(b) *Existing dwellings.* Existing dwellings are considered to meet the following criteria when inspected and certified as meeting HUD requirements for one-to-four unit dwellings in accordance with Agency guidelines:

(1) Be structurally sound;

(2) Be functionally adequate;

(3) Be in good repair, or to be placed in good repair with loan funds; and

(4) Have adequate and safe electrical, heating, plumbing, water, and wastewater disposal systems.

(c) *Escrow account for exterior or interior development.* This paragraph does not apply if the development is related to a ''combination construction and permanent loan'' under § 3555.101(c). If a dwelling is complete with the exception of interior or exterior development work, Rural Development may issue the Loan Note Guarantee on the loan if the following conditions are met:

(1) The incomplete work does not affect the habitability of the dwelling, nor the health or safety of the housing occupants.

(2) The cost of any remaining interior or exterior work is not greater than 10 percent of the final loan amount.

(3) An escrow account is funded in an amount sufficient to assure the completion of the remaining work. This figure must be at least 100 percent of the cost of completion but may be higher if the lender determines a higher amount is needed.

(4) The builder or a licensed contractor has executed a contract providing for completion of the planned development within 180 days of loan closing. If the borrower will be completing the planned development on an existing dwelling without the services of a contractor, the requirement for an executed contract is waived when all of the following conditions are met:

(i) The estimated cost to complete the work is less than 10 percent of the total loan amount;

(ii) The escrow amount is less than or equal to $10,000; and

(iii) The lender has determined the borrower has the knowledge and skills necessary to complete the work.

(5) The lender may release escrowed funds only after obtaining a final inspection report acknowledged by the borrower and indicating all planned development has been satisfactorily completed.

(6) The lender remains responsible to ensure a final inspection is performed and required repairs are completed.

(7) The settlement statement reflects the amounts escrowed.

§ 3555.203 Ownership requirements.

After the loan is closed, the borrower must have an acceptable ownership interest in the property as evidenced by one of the following:

(a) *Fee-simple ownership.* Acceptable fee-simple ownership is evidenced by a fully marketable title with a deed vesting a fee-simple interest in the property to the borrower.

(b) *Secured leasehold interest.* Loans may be guaranteed on leasehold properties. If the conditions in this subsection are met:

(1) The applicant is unable to obtain fee simple title to the property;

(2) Such leaseholds are fully marketable in the area, except in the case of properties located on American Indian restricted land;

(3) The lease has an unexpired term of at least 45 years from the date of loan closing, except in the case of properties located on American Indian restricted land where the lease must have an unexpired term at least equal to the term of the loan. Leases on American Indian restricted land for period of 25 years which are renewable for a second 25 year period are permissible as are leases of a longer duration;

(4) The mortgage must cover both the property improvements and the leasehold interest in the land;

(5) The leasehold estate must constitute real property, be subject to the mortgage lien, be insured by a title policy, be assignable or transferable and cannot be terminated except for nonpayment of lease rents; and

(6) The lease must be recorded in the appropriate local real estate records.

§ 3555.204 Security requirements.

Rural Development will only guarantee loans that are adequately secured. A loan will be considered adequately secured only when all of the following requirements are met:

(a) *Recorded security document.* The lender obtains at closing, a mortgage on all required ownership and leasehold interests in the security property and ensures that the loan is properly closed.

(b) *Prior liens.* No liens prior to the guaranteed mortgage exist except in conjunction with a supplemental loan for transfer and assumption. The guaranteed loan must have first lien position at closing. Junior liens by other parties are permitted as long as the junior liens do not adversely affect repayment ability or the security for the guaranteed loan.

(c) *Adequate security.* Existing and proposed property improvements are completely on the site and do not encroach on adjoining property.

(d) *Collateral.* All collateral secures the entire loan.

§ 3555.205 Special requirements for condominiums.

Loans may be guaranteed for condominium units in condominium projects that meet all the requirements of this part, as well as the standards for condominium standards established by HUD, Fannie Mae, VA, or Freddie Mac, including those related to self-certification, warranty, underwriting, and ineligible condominium projects.

§ 3555.206 Special requirements for community land trusts.

A community land trust must meet the definition in accordance with § 3555.10 and other requirements described in this subpart. Loans may be guaranteed for dwellings on land owned by a community land trust only if:

(a) *Rural Development review.* Rural Development reviews and accepts any restrictions imposed by the community land trust on the property or applicant before loan closing. The Agency may place conditions on the approval of restrictions on resale price and rights of first refusal.

(b) *Foreclosure termination.* The community land trust automatically and permanently terminates upon foreclosure or acceptance by the lender of a deed in lieu of foreclosure.

(c) *Organization.* The organization must meet the definition of a community land trust as defined in the Housing Act of 1949 and the following requirements:

(1) Be organized under State or local laws.

(2) Members, founders, contributors or individuals cannot benefit from any part of net earnings of the organization.

(3) The organization must be dedicated to decent affordable housing for low-and moderate-income people.

(4) Comply with financial accountability.

(d) *Lender documentation.* The lender's file must contains documentation that the community land trust has community support, local market acceptance and 2 years of prior experience in providing affordable housing.

(e) *Appraisals.* A property located on a site owned by a community land trust must be appraised as leasehold interest and meet the provisions of § 3555.203.

§ 3555.207 Special requirements for Planned Unit Developments (PUDs).

Loans may be guaranteed for PUDs that meet all of the requirements of this part, as well as the criteria for PUDs established by HUD, VA, Fannie Mae, or Freddie Mac.

§ 3555.208 Special requirements for manufactured homes.

Loans may be guaranteed for manufactured homes if all the requirements in this section are met.

(a) *Eligible costs.* In addition to the loan purposes described in § 3555.101, Rural Development may guarantee a loan used for the following purposes related to manufactured homes when a real estate mortgage covers both the unit and the site:

(1) Purchase of a new manufactured home, transportation, permanent foundation, and installation costs of the manufactured home, and purchase of an eligible site if not already owned by the applicant; and

(2) Site development work properly completed to HUD, state and local government standards, as well as, the manufacturer's requirements for installation on a permanent foundation.

(b) *Loan restrictions.* The following loan restrictions are in addition to the loan restrictions contained in § 3555.102:

(1) A loan will not be guaranteed if it is used to purchase a site without also financing a new unit.

(2) A loan will not be guaranteed if it is used to purchase furniture, including but not limited to: movable articles of personal property such as drapes, beds, bedding, chairs, sofas, divans, lamps, tables, televisions, radios, and stereo sets. Furniture does not include wall-to-wall carpeting, refrigerators, ovens, ranges, washing machines, clothes dryers, heating or cooling equipment, or other similar items.

(3) A loan will not be guaranteed to purchase an existing manufactured home and site unless:

(i) The unit and site are already financed with an Agency direct single family or guaranteed loan;

(ii) The unit and site are being sold by Rural Development as REO property;

(iii) The unit and site are being sold from the lender's inventory, and the loan for which the unit and site served as security was a loan guaranteed by Rural Development; or

(iv) The unit was installed on its initial installation site on a permanent foundation complying with the manufacturer's and HUD installation standards.

(4) A loan will not be guaranteed for repairs to an existing unit, unless the unit meets the requirements of § 3555.208(b)(3).

(5) A loan will not be guaranteed for the purchase of an existing manufactured home that has been moved from another site.

(c) *Construction and development.* (1) To be an eligible unit, the new unit must have a floor space of not less than 400 square feet.

(2) The unit must be properly installed on a permanent foundation according to HUD standards, and the manufacturer's requirements for installation on a permanent foundation. A certification of proper foundation is required.

(3) All wheels, axles, towing hitches and running gear must be removed from the manufactured home.

(4) Unit construction must conform to the Federal Manufactured Home Construction and Safety Standards (FMHCSS) and be constructed in compliance with the HUD heating and cooling requirements for the State in which the unit will be located. Any alterations, such as garage construction, as a new unit must comply with FMHCSS.

(5) The site development, installation and set-up must conform to the HUD requirements and the manufacturer's requirements for a permanent installation.

(6) The unit must meet or exceed the IECC in effect at the time of construction.

(7) The lender must maintain documentation of construction plans and required certifications.

(d) *Warranty requirements.* (1) The applicant must receive a warranty in accordance with HUD requirements for new manufactured homes on permanent foundations.

(2) The warranty must identify the unit by serial number.

(3) The lender and applicant must obtain certification that the manufactured home has sustained no hidden damage during transportation and, if manufactured in separate sections that the sections were properly joined and sealed according to the manufacturer's specifications.

(4) The manufactured home must be affixed with a data plate, placed inside the unit, and a certification label, affixed to each transportable section at the tail-light end of each unit which indicates that the home was designed and built in accordance with HUD's construction and safety standards in effect on the date the home was manufactured.

(5) The lender must retain a copy of all manufacturers' warranties in the lender file.

(e) *HUD requirements.* The FMHCSS and HUD requirements may be found at *http://www.access.gpo.gov/nara/cfr/waisidx_04/24cfr3280_04.html.*

(f) *Title and lien requirements.* To be eligible for the SFHGLP, the following conditions must be met and documented in the lender's file:

(1) A manufactured home loan must be secured by a perfected lien on real property consisting of the manufactured home and the land;

(2) The manufactured home must be taxed as real estate as applicable under State law, including relevant statutes, regulations, and judicial decisions;

(3) The security instrument must be recorded in the land records and must identify the encumbered property as including both the home and the land;

(4) If applicable State law so permits, any certificate of title to the manufactured home must be surrendered to the appropriate State government authority. If the certificate of title cannot be surrendered, the lender must indicate its lien on the certificate;

(5) The mortgage must be covered by a standard real property title insurance policy and any other endorsement required in the applicable jurisdiction for manufactured home ensuring the manufactured home is part of the real property that secures the loan; and

(6) The borrower must acknowledge the unit is a fixture and part of the real estate securing the mortgage.

§ 3555.209 Rural Energy Plus loans.

Loans guaranteed under Rural Energy Plus provisions are for the purchase of energy-efficient homes. Homes that meet the most current IECC standards including existing homes that are retrofitted to those standards are eligible. Energy-efficient homes result in lower utility bills, conserve energy, and thus, make more income available for monthly debt obligations. For loans

guaranteed under this subpart, the lender will certify that the home meets the most current IECC standards. The Handbook will define what further flexibilities can be extended.

§§ 3555.210–3555.249 [Reserved]

§ 3555.250 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

Subpart F—Servicing Performing Loans

§ 3555.251 Servicing responsibility.

(a) *Servicing action.* Lenders must perform those servicing actions that a reasonable and prudent lender would perform in servicing its own portfolio of non-guaranteed loans.

(b) *Third party servicer.* A lender may contract with a third party to service its loans, but the servicing lender of record remains responsible for the quality and completeness of the servicing.

(c) *Transfer of servicing.* Rural Development may require a lender to transfer its loan servicing activities to an approved lender if Rural Development determines that the lender has failed to provide acceptable servicing.

(d) *Non-compliance.* Lenders who fail to comply with Agency requirements or program guidelines may be subject to withdrawal of lender approval, denial and/or reduction in loss claims, withdrawal of the loan guarantee and/or indemnification in accordance with § 3555.108(d).

§ 3555.252 Required servicing actions.

Lender servicing responsibility includes, but is not limited to, the following actions.

(a) *Collecting regularly scheduled payments.* Lender must collect regularly scheduled loan payments and apply them to the borrower's account.

(b) *Payment of taxes and insurance.* Lenders must ensure that real estate taxes, assessments, and flood and hazard insurance premiums for all property that secures a guaranteed loan are paid on schedule.

(1) *Establish escrow account.* Lenders with the capacity to escrow funds must establish escrow accounts for all guaranteed loans for the payment of taxes and insurance. Escrow accounts must be administered in accordance with the Real Estate Settlement and Procedures Act (RESPA) of 1974, and insured by the FDIC or the NCUA.

(2) *Plan and responsibility of lender to ensure payment.* Lenders that do not have the capacity to escrow funds must implement procedures, subject to Agency approval, to ensure the borrower pays such obligations on a timely basis. In addition, such lenders must accept the responsibility for payment of taxes and insurance that comes due prior to liquidation. Rural Development will not include any taxes or insurance amounts that accrued prior to acceleration in any potential loss claim. Rural Development may revoke the acceptance of the lender's plan if loan performance indicates that delinquency and loss rates are being affected by the lender's inability to escrow for taxes, assessment, and insurance. This alternative is not available to lenders who contract for servicing.

(c) *Insurance.* (1) Until the loan is paid in full, lenders must ensure that borrowers maintain hazard and flood insurance as required, on property securing guaranteed loans. The insurance must be issued by companies in amounts, and on terms and conditions, acceptable to Rural Development. Flood insurance through the National Flood Insurance Program must be maintained for all property located in special flood or mudslide areas identified by FEMA and must be consistent with mortgage industry standards, as determined by the Agency.

(2) Lenders must ensure that borrowers immediately notify them of any loss or damage to insured property securing guaranteed loans and collect the amount of the loss from the insurance company. Unless the borrower pays off the guaranteed loan using the insurance proceeds, the following requirements must be met:

(i) All repairs and replacements using the insurance proceeds must be planned, performed, and inspected in accordance with Agency construction requirements and procedures.

(ii) When insurance funds remain after payments for all repairs, replacements, and other authorized disbursements have been made, the funds must be applied in the following order: prior liens (including past-due property taxes); past-due amounts; protective advances; and released to the borrower if the lender's debt is adequately secured.

(3) If the insurance claim is de minimis as determined by the Agency, the lender may release the funds directly to the borrower to advance funds to contractors, provided that the account is current and the borrower has a history of timely payments; the borrower occupies the property; and the borrower executes an affidavit agreeing to apply the funds for repairs or reconstruction of the dwelling.

(d) *Credit reporting.* The lender must notify a credit repository of each new guaranteed loan, must identify the loan as guaranteed by Rural Development, and must report to that repository whenever any account becomes more than 30 calendar days past due.

(e) *Bankruptcy actions.* The lender is responsible for monitoring and taking all appropriate and prudent actions during bankruptcy proceedings to protect the borrower and Government's interest, in accordance with § 3555.306(d).

§ 3555.253 Late payment charges.

Late payment charges will not be covered by the guarantee and cannot be added to the principal and interest due under any guaranteed note.

(a) *Maximum amount.* Any late payment charge must be reasonable and customary for the area.

(b) *Loans with interest assistance.* The lender must not charge a late fee if the only unpaid portion of the borrower's scheduled payment is interest assistance owed by Rural Development.

§ 3555.254 Final payments.

Lenders may release security instruments only after full payment of all amounts owed, including any recapture, has been received and verified.

§ 3555.255 Borrower actions requiring lender approval.

(a) *Mineral leases.* A lender may consent to the lease of mineral rights and subordinate its lien to the lessee's rights and interests in the mineral activity if the security property will remain suitable as a residence, the lender's security interest will not be adversely affected, and Rural Development's environmental requirements are met. Concurrence by Rural Development prior to consenting to the lease of mineral rights is required, unless otherwise provided by the Agency. Subordination of guaranteed loans to a mineral lease does not entitle the leaseholder to any proceeds from the sale of the security property.

(1) If the proposed activity is likely to decrease the value of the security property, the lender may consent to the lease only if the borrower assigns 100 percent of the income from the lease to the lender to be applied to reduce the principal balance, and the total rent to be paid is at least equal to the estimated decrease in the market value of the security property.

(2) If the proposed activity is not likely to decrease the value of the security property, the lender may consent to the lease if the borrower

agrees to use any damage compensation received from the lessee to repair damage to the site or dwelling, or to assign it to the lender to be applied to reduce the principal balance.

(b) *Partial release of security property.* A lender may consent to transactions affecting a security property, such as selling or exchanging security property or granting of a right-of-way across the security property, and grant a partial release, provided that the following conditions are met.

(1) The borrower will receive adequate compensation, and either make a reduction to the principal balance or make improvements to the security property, in order to maintain the current loan-to-value ratio for the guaranteed loan.

(i) For sale of security property, the borrower must receive cash in an amount equal to or greater than the value of the security property being sold or interests being conveyed.

(ii) For exchange of security property, the borrower must receive another parcel of property with value equal to or greater than that being disposed of.

(iii) For granting an easement or right-of-way, the borrower must receive benefits that are equal to or greater than the value of the security property being disposed of or interests being conveyed.

(2) An appraisal of the security property will be conducted by the lender if the most current appraisal is more than 1 year old or if it does not reflect current market value.

(3) The security property, after the transaction is completed, will continue to be an adequate, safe, and sanitary dwelling.

(4) Repayment of the guaranteed debt will not be jeopardized.

(5) When exchange of all or part of the security property is involved, title clearance will be obtained before release of the existing security.

(6) Proceeds from the sale of a portion of the security property, granting an easement or right-of-way, damage compensation, and all similar transactions requiring the lender's consent, will be used in the following order:

(i) To pay customary and reasonable costs related to the transaction that must be paid by the borrower.

(ii) To be applied on a prior lien debt, if any.

(iii) To be applied to the guaranteed indebtedness or used for improvements to the security property consistent with the purposes and limitations applicable for use of guaranteed loan funds. The lender must ensure that the proceeds are used as planned.

(7) The lender will seek Agency concurrence, unless otherwise provided by the Agency, by submitting documentation supporting the borrower's reason for request, the proposed use of the land with supporting plans, specifications, cost estimates, surveys, disclosures of restrictions, legal description modification, title clearance related to the transaction request, as applicable, and any other documents necessary for the Agency to make a determination.

§ 3555.256 Transfer and assumptions.

(a) *Transfer without assumption.* (1) The lender must notify Rural Development if the borrower transfers the security property and the transferee does not assume the debt.

(2) Except as described in paragraph (d) of this section, if a security property is transferred with the lender's knowledge without assumption of the debt, Rural Development will void the guarantee.

(b) *Transfer with assumption.* (1) The lender must obtain Agency approval before consenting to a transfer with an assumption of the outstanding debt.

(2) Rural Development may approve a transfer with an assumption of the outstanding debt if the following conditions are met:

(i) The transferee must assume the entire outstanding debt and acquire all property securing the guaranteed loan balance; however, the transferor must remain personally liable. The transferor must pay any recapture as a result of interest subsidy granted, if applicable, owed at the time of the transfer and assumption.

(ii) The transferee must meet the eligibility requirements described in subpart D of this part.

(iii) The property must meet the site and dwelling requirements described in subpart E of this part, or be brought to those standards prior to the transfer. Guaranteed loans secured by properties located in areas that have ceased to be rural may be assumed notwithstanding the fact that the property is located in a non-rural area.

(iv) The priority of the existing lien securing the guaranteed loan must be maintained or improved.

(v) Any new rates and terms must not exceed the rates and terms allowed for new loans under this part, and the interest rate must not exceed the interest rate on the initial loan.

(vi) A new guarantee fee, calculated based on the remaining principal balance, must be paid to Rural Development in accordance with § 3555.107(f).

(vii) If additional financing is required to complete the transfer and assumption or to make needed repairs, Rural Development may approve a supplemental guaranteed loan provided adequate security exists.

(viii) The lender must verify and document their permanent file in accordance with subpart C of this part.

(ix) A written request supported by the lender demonstrating the applicant's credit worthiness, income eligibility and underwriting analysis must be submitted to the Agency for approval of a transfer and assumption.

(x) The lender may close the loan in accordance with § 3555.107.

(c) *Transfer without approval.* If a lender becomes aware that a borrower has transferred a property without approval, the lender must take one of the following actions:

(1) Notify Rural Development and continue the loan without the guarantee; or

(2) Obtain Agency approval for the transfer with assumption; or

(3) Liquidate the guaranteed loan and submit a claim for any loss.

(d) *Transfer without triggering the due-on-sale clause.* (1) The following types of transfers do not trigger due-on-sale clauses in security instruments:

(i) A transfer from the borrower to a spouse or children not resulting from the death of the borrower;

(ii) A transfer to a relative, joint tenant, or tenant by the entirety resulting from the death of the borrower;

(iii) A transfer to a spouse or ex-spouse resulting from a divorce decree, legal separation agreement, or property settlement agreement;

(iv) A transfer to a person other than a deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, if the dwelling will be occupied by one or more persons who were dependent on the borrower at the time of death, and there is a reasonable prospect of repayment; or

(v) A transfer into an inter vivos trust in which the borrower does not transfer rights of occupancy in the property.

(2) When a transferee obtains a property with a guaranteed loan through a transfer that does not trigger the due-on-sale clause:

(i) The lender will notify Rural Development of the transfer;

(ii) Rural Development will continue with the guarantee, whether or not the transferee assumes the guaranteed loan;

(iii) The transferee may assume the guaranteed loan on the rates and terms contained in the promissory note. If the account is past due at the time an

assumption agreement is executed, the loan may be re-amortized to bring the account current;

(iv) The transferee may assume the guaranteed loan under new rates and terms if the transferee applies and is eligible.

(3) Any subsequent transfer of title, except upon the death of the inheritor or between inheritors to consolidate title, will trigger the due-on-sale clause.

§ 3555.257 Unauthorized assistance.

(a) *Unauthorized assistance due to false information.* (1) If the borrower receives a guaranteed loan based on false information provided by the borrower, Rural Development may require the lender to accelerate the guaranteed loan. After the lender accelerates the loan upon request, the lender may submit a claim for any loss. If the lender fails to accelerate the loan upon request, Rural Development may reduce or void the guarantee.

(2) If the borrower receives a guaranteed loan based on false information provided by the lender, Rural Development may void the guarantee subject to the provisions of § 3555.108.

(3) If the borrower or lender provides false information, Rural Development may pursue criminal and civil false claim actions, suspension and/or debarment, and take all other appropriate action.

(b) *Unauthorized assistance due to inaccurate information.* Rural Development will honor a guarantee for a loan made to an applicant who receives a guaranteed loan based on inaccurate information if the applicant was eligible to receive the guaranteed loan at the time it was made, and if the loan funds were used only for eligible loan purposes.

§§ 3555.258–3555.299 [Reserved]

§ 3555.300 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

Subpart G—Servicing Non-Performing Loans

§ 3555.301 General servicing techniques.

In accordance with industry standards and as provided by the Agency:

(a) *Prompt action.* Lenders shall take prompt action to collect overdue amounts from borrowers to bring a delinquent loan current in as short a time as possible to avoid foreclosure to the extent possible and minimize losses.

(b) *Evaluation of borrower.* Lenders must evaluate loans and take appropriate loss mitigation actions in an effort to resolve any repayment problems and provide borrowers with the maximum opportunity to become successful homeowners.

(c) *Prompt contact.* In the event of default, the lender shall promptly contact the borrower within a timeframe specified by the Agency.

(d) *Determine ability to cure.* The lender must make a reasonable effort to obtain from the borrower information regarding the reason for default, the borrower's current financial situation and any other necessary information to evaluate the borrower's ability to cure the default and determine a feasible plan for collection, and/or alternatives to foreclosure.

(e) *Communication.* Before an account becomes 2 months past due and if there is no payment arrangement in place, the lender must send a certified letter to the borrower requesting an interview for the purpose of resolving the past due account.

(f) *Prior to liquidation.* Before an account becomes 2 months past due or before initiating liquidation, the lender must assess the physical condition of the property, determine whether it is occupied, and take necessary steps to protect the property.

(g) *Maintain documentation.* The lender must maintain documentation demonstrating that requirements in this subpart have been met and what steps have been taken to save a mortgage prior to making a decision to foreclose.

(h) *Formal servicing plan.* The lender must obtain Agency concurrence of a formal servicing plan when a borrower's account is 90 days or more delinquent and a method other than foreclosure is recommended to resolve the delinquency. Rural Development may issue a written waiver of the need for concurrence for some or all servicing actions by a lender, on a case-by-case basis, if the lender demonstrates that it no longer needs the oversight. This may be demonstrated by the lender's portfolio performance including, but not limited to, lower than average delinquency rates, foreclosure rates, or loss claim rates. Rural Development may revoke such waiver at any time, upon notice and without appeal rights.

§ 3555.302 Protective advances.

Lenders may pay the following expenses necessary to protect the security property and charge the cost against the borrower's account.

(a) *Advances for taxes and insurance.* Without prior Agency concurrence, lenders may advance funds to pay past due real estate taxes, hazard and flood insurance premiums, and other related costs.

(b) *Advances for costs other than taxes and insurance.* Protective advances for costs other than taxes and insurance, such as emergency repairs, can be made only if the borrower cannot, or will not, obtain an additional loan or reimbursement from an insurer or the borrower has abandoned the property. The lender must determine that any repairs funded by protective advances are cost effective. Repairs funded by protective advances must be planned, performed and inspected in accordance with § 3555.202 and as further described by the Agency. The lender must obtain prior Agency concurrence or a waiver of concurrence as provided for in § 3555.301(h) before issuing protective advances under this paragraph only for protective advances of a significant amount as specified by the Agency.

§ 3555.303 Traditional servicing options.

(a) *Eligibility.* To be eligible for traditional servicing, all the following conditions must be met:

(1) The borrower presently occupies the property;

(2) The borrower is in default or facing imminent default for an involuntary reason. A borrower is ''facing imminent default'' if that borrower is current or less than 30 days past due on the mortgage obligation and is experiencing a significant reduction in income or some other hardship that will prevent him or her from making the next required payment on the mortgage during the month in which it is due. The borrower must be able to document the cause of the imminent default, which may include, but is not limited to, one or more of the following types of hardship:

(i) A reduction in or loss of income that was supporting the mortgage loan;

(ii) A change in household financial circumstances;

(3) The borrower demonstrates a reasonable ability to support repayment of the debt in the future;

(4) There are no adverse property conditions that inhibit the inhabitability or use of the property; and

(5) The borrower has not received assistance due to the submission of false information by the borrower.

(b) *Servicing options.* The lender must consider traditional servicing options in the following order to resolve the borrower's default or imminent default:

(1) *Repayment agreement.* A repayment agreement is an informal plan lasting 3 months or less to cure short-term delinquencies.

(2) *Special forbearance agreement.* A special forbearance agreement is a longer-term formal plan to cure a delinquency not to exceed the equivalent of 12 months of PITI. The agreement may gradually increase monthly payments in an amount sufficient to repay the arrearage over a reasonable amount of time and/or temporarily reduce or suspend payments for a short period. If the borrower is at least 3 months delinquent, the special forbearance agreement may resume normal payments for several months followed by a loan modification.

(3) *Loan modification plan.* A loan modification is a permanent change in one or more of the terms of a loan that results in a payment the borrower can afford and allows the loan to be brought current.

(i) Loan modifications may include a reduction in the interest rate, even below the market rate if necessary.

(ii) Loan modifications may capitalize all or a portion of the arrearage (PITI) and/or reamortization of the balance due. Capitalization may also include foreclosure fees and costs, tax and insurance advances, past due annual fees imposed by the lender, but not late charges or lender fees.

(iii) If necessary to demonstrate repayment ability, the loan term after reamortization may be extended for up to 30 years from the date of the loan modification. However, the Rural Development guarantee is only effective 30 years from the origination date, and if the loan term is extended beyond the 30 year loan term from the date of origination, the guarantee will not apply beyond the original 30 year loan term.

(iv) The lender's lien priority cannot be adversely affected by providing a loan modification.

(c) *Terms of loan note guarantee.* Use of traditional servicing options does not change the terms of the loan note guarantee.

§ 3555.304 Special servicing options.

(a) *General.* (1) Lenders must exhaust traditional servicing options outlined in this part or have determined that use of traditional servicing options would not resolve the delinquency, prior to special servicing options. Lenders must exhaust special servicing options prior to liquidation in accordance with §§ 3555.305 or 3555.306.

(2) Lenders must obtain Agency concurrence or a waiver as provided in § 3555.301(h) before implementing any special servicing options.

(3) Use of special loan servicing does not change the terms of the loan note guarantee.

(4) Special servicing options shall be used in the order established in this section to bring the borrower's mortgage payment to income ratio as close as possible to, but not less than, 31 percent.

(b) *Conditions for special servicing options.* In addition to the requirements in § 3555.303(a), the following conditions apply to all special loan servicing:

(1) The borrower's total debt to income ratio following the special loan servicing must not exceed 55 percent. Prior to servicing a borrower's account with special loan servicing, the lender must verify the borrower's income and total debt.

(2) The borrower must successfully complete a trial payment plan of sufficient duration, as determined by the Agency, to demonstrate that the borrower will be able to make regularly scheduled payments as modified by the special loan servicing.

(3) Expenses related to special loan servicing including, but not limited to, title search and recording fees shall not be charged to the borrower. However, if a foreclosure was initiated and canceled prior to special loan servicing, legal fees and costs for work performed in relation to the foreclosure costs before the cancellation date may be charged to the borrower.

(4) Capitalization of late charges and lender fees is not permitted in the special loan servicing option.

(c) *Extended-term loan modification.* The Lender may modify the loan by reducing the interest rate to a level at or below the maximum allowable interest rate and extending the repayment term up to a maximum of 40 years from the date of loan modification.

(1) The interest rate must be fixed.

(2) The Agency may establish the maximum allowable interest rate by publishing a notice of a change in interest rate will be published as authorized in Exhibit B of subpart A of part 1810 of this chapter (RD Instruction 440.1, available in any Rural Development office) or online at: *http://www.rurdev.usda.gov/rd_instructions.html.* If the maximum allowable interest rate has not been so established, it shall be 50 basis points greater than the most recent Freddie Mac Weekly Primary Mortgage Market Survey (PMMS) rate for 30-year fixed-rate mortgages (U.S. average), rounded to the nearest one-eighth of one percent (0.125%), as of the date the loan modification is executed.

(3) The term shall be extended only as long as is necessary to achieve the targeted mortgage payment to income ratio after the interest rate has been fixed at a level at or below the maximum allowable rate.

(4) If the targeted mortgage payment to income ratio cannot be achieved using an extended-term loan modification alone, the lender may consider a mortgage recovery advance under this section in addition to the extended-term loan modification.

(d) *Mortgage recovery advance.* (1) The maximum amount of a mortgage recovery advance is the sum of arrearages not to exceed 12 months of PITI, annual fees, legal fees and foreclosure costs related to a cancelled foreclosure action, and principal reduction.

(2) The maximum amount of a mortgage recovery advance is 30 percent of the unpaid principal balance as of the date of default, minus any arrearages advanced to cure the default and any foreclosure costs incurred to that point. The Agency may change the maximum amount of mortgage recovery advance by publication in the **Federal Register**.

(3) The principal deferment amount for a specific case shall be limited to the amount that will bring the borrower's total monthly mortgage payment to 31 percent of gross monthly income.

(4) The lender may file a claim pursuant to Subpart H of this part for reimbursement of reasonable title search and/or recording fees in connection with the promissory note and mortgage or deed-of-trust, not to exceed a maximum amount specified by the Agency.

(5) Prior to making a mortgage recovery advance, the lender must perform an escrow analysis to ensure that the payment made on behalf of the borrower accurately reflects the escrow amount required for taxes and insurance.

(6) The following terms apply to the repayment of mortgage recovery advances:

(i) The mortgage recovery advance note and subordinate mortgage or deed-of-trust shall be interest-free.

(ii) Borrowers are not required to make any monthly or periodic payments on the mortgage recovery advance note; however, borrowers may voluntarily submit partial payments without incurring any prepayment penalty.

(iii) The due date for the mortgage recovery advance note shall be the due date of the guaranteed note held by the lender, as modified by the special loan servicing. Prior to the due date on the mortgage recovery advance note, payment in full under the note is due at the earlier of the following:

(A) When the first lien mortgage and the guaranteed note are paid off; or

(B) When the borrower transfers title to the property by voluntary or involuntary means.

(iv) Repayment of all or part of the mortgage recovery advance must be remitted directly to the Agency by the borrower.

(v) The Agency will collect this Federal debt from the borrower by any available means if the mortgage recovery advance is not repaid based on the terms outlined in the promissory note and mortgage or deed-of-trust.

(7) The lender may request reimbursement from the Agency for a mortgage recovery advance. A fully supported and documented claim for reimbursement must be submitted to the Agency within 60 days of the advance being executed by the borrower. The borrower must execute a promissory note payable to the Agency and a mortgage or deed-of-trust in recordable form perfecting a lien naming the Agency as the secured party for the amount of the mortgage recovery advance. The lender shall properly record the mortgage or deed-of-trust in the appropriate local real estate records and provide the original promissory note to the Agency.

(8) A loss claim filed by a lender will be adjusted by any amount of mortgage recovery advance reimbursed to the lender by the Agency.

§ 3555.305 Voluntary liquidation.

The lender must have exhausted the servicing options outlined in §§ 3555.302 through 3555.304 to cure the delinquency before considering voluntary liquidation. The methods of voluntary liquidation of the security property outlined in this section may be used to protect the interests of the Government. The lender must obtain prior Agency concurrence or a waiver as provided by § 3555.301(h).

(a) *Eligibility.* To be eligible for voluntary liquidation, the following conditions must be met:

(1) The loan must be at least 30 days delinquent;

(2) The default was caused by an involuntary reason; and

(3) The borrower must presently occupy the property except in situations where the borrower does not occupy the property due to the same involuntary reason that led to the default.

(b) *Pre-foreclosure or short sale.* The borrower may sell the security property for a price that represents its fair market value. The sale price, less any reasonable and customary sale or closing costs incurred by the borrower, must be applied to the borrower's account.

(c) *Deed in lieu of foreclosure.* The lender may accept a deed in lieu of foreclosure if it will result in a lesser loss claim than if foreclosure occurs.

(d) *Offer by junior lienholder.* If a junior lienholder makes an offer in the amount of at least the anticipated net recovery value, as calculated in accordance with § 3555.353, the lender may assign the note and mortgage to the junior lienholder.

(e) *Other methods of voluntary liquidation.* The lender may propose other methods of voluntary liquidation that are consistent with this section if the lender fully documents how the proposal will result in a savings to the Government.

§ 3555.306 Liquidation.

(a) *General.* (1) When a lender determines that a borrower is unable or unwilling to meet loan obligations with servicing options under this subpart, the lender must accelerate the guaranteed loan and, if necessary, foreclose.

(2) Prior to acceleration the lender must have advised the borrower, in writing, of available foreclosure avoidance options and the borrower must have failed to request such options.

(3) The lender must accelerate the guaranteed loan, with a demand letter, when the account is three scheduled payments past due unless there is a reasonable prospect of resolving the delinquency through another method.

(4) The borrower is responsible for all expenses associated with liquidation and acquisition.

(b) *Foreclosure.* (1) The lender must initiate foreclosure within 90 calendar days of the decision to liquidate unless Federal, State, or local law requires that foreclosure action be delayed. When there is a legal delay (such as bankruptcy), foreclosure must be initiated within 90 calendar days after it becomes possible to do so. Foreclosure initiation begins with the first public action required by law such as filing a complaint or petition, recording a notice of default, or publication of a notice of sale.

(2) Lenders must exercise due diligence in completing the liquidation process to ensure the foreclosure is cost effective, expeditious, and completed in an efficient manner, as otherwise provided by the Agency. The lender must choose the foreclosure method representing the best interest of the Federal Government.

(3) The lender's decision to bid at foreclosure and any bid amount will be based upon the property value, whether the property value is sufficient to cover the existing debt and incurred costs, and any potential to recover a deficiency. The lender will encourage third party bidding at a foreclosure sale when the total debt, including the cost of acquiring, managing and disposing of the property, if acquired, is greater than the gross proceeds expected from a foreclosure sale at market value.

(c) *Reinstatement of accounts.* Unless State law imposes other requirements, the lender may reinstate an accelerated account only if the borrower:

(1) Pays, or makes acceptable arrangements to pay, all past-due amounts, any protective advances, and any foreclosure-related costs incurred by the lender; and

(2) Has the ability to continue making scheduled payments on the guaranteed loan.

(d) *Bankruptcy.* (1) When a borrower files a petition in bankruptcy, the lender must suspend collection and foreclosure actions in accordance with Title 11 of the United States Code.

(2) The lender may accept conveyance of security property by the trustee in the bankruptcy, or the borrower, if the bankruptcy court has approved the transaction, and the lender will acquire title free of all liens and encumbrances except the lender's liens.

(3) Whenever possible after the borrower has filed for protection under Chapter 7 of Title 11 of the United States Code, a reaffirmation agreement will be signed by the borrower and approved by the bankruptcy court prior to discharge, if the lender and the borrower decide to continue with the loan.

(4) The lender must protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings.

(5) The lender can include principal and interest lost as a result of bankruptcy proceedings in any claim filed in accordance with § 3555.354.

(e) *Maintain condition of security property.* The lender must make reasonable and prudent efforts to ensure that the condition of the security property is maintained during any liquidation, acquisition, and sale of the property. These efforts include, but are not limited to, periodic inspections, performing necessary repairs, winterization, securing the property, removing debris, yard maintenance and ensuring the continuance of property insurance. The lender must identify, determine the cause, and document any environmental hazard affecting the value of the security property. The lender must retain a record of all efforts to maintain the condition of the security property.

(f) *Managing and disposing of REO property.* Lenders will expeditiously gain possession of the REO property in a manner designed to ensure maximum recovery as follows.

(1) The lender must prepare and maintain a disposition plan on all acquired properties. The lender will submit the property disposition plan and any subsequent changes for Agency concurrence in a timely manner as specified by the Agency. The lender may obtain a waiver of the concurrence requirement as provided for in § 355.5301(h). The plan will include the proposed method for sale of the property, the estimated value based on an appraisal, minimum sale price, itemized estimated costs of the sale, and any other information that could impact the amount of loss on the loan.

(2) The lender will make all reasonable efforts to sell the property within 9 months from the later of either the foreclosure sale or expiration of any redemption period. The Agency may grant an extension of the permissible marketing period in limited circumstances including, but not limited to, when a separate legal action is necessary to gain possession of the property following foreclosure or when the lender has or is in final negotiation for a firm purchase agreement. If the property is on American Indian restricted land, an additional 3 month marketing period is permitted.

(3) The lender must notify the Agency when the property has not been sold within 30 days of the expiration of the permissible marketing period. If the REO remains unsold at the end of the permissible marketing period, the Agency will order a liquidation value appraisal and apply an acquisition and management resale factor to estimate holding and disposition cost. Interest expenses accrued beyond 90 days of the foreclosure sale date or expiration of any redemption period, whichever is later, will be the responsibility of the lender and not covered by the guarantee.

(g) *Debt settlement reporting.* The lender must report to the IRS and all national credit reporting repositories any debt settled through liquidation.

§ 3555.307 Assistance in natural disasters.

(a) *Policy.* Servicers must utilize general procedures available under this subpart for servicing borrowers affected by natural disasters, as supplemented by Rural Development, to minimize delinquencies and avoid foreclosure.

(b) *Evaluating the damage.* Servicers are expected to inspect a security property whenever they have reason to believe the property has been damaged.

(c) *Special relief measures.* The servicer must evaluate on an individual case basis a mortgage that is (or becomes) seriously delinquent as the result of the borrower's incurring extraordinary damages or expenses related to the natural disaster. The servicer should document its individual mortgage file regarding all servicing actions taken during this time period. The lender must consider all special relief alternatives for disaster assistance available to the borrower prior to suspending collection and foreclosure activities. Servicing actions suspended as a result of the natural disaster will expire 90 days from the declaration date of the natural disaster, unless otherwise extended by the Agency.

(d) *Insurance claim settlements.* Prior to release of hazard insurance proceeds because of damage caused by a natural disaster, servicers must complete a cost and benefit analysis on a case-by-case basis to determine if the property can be repaired or rebuilt. The servicer's actions must be based on the status of the mortgage, the amount of insurance proceeds, and the length of time required repairing or reconstructing the property, and the market conditions in the area. If the property will not be repaired or rebuilt, the insurance proceeds must be applied to the unpaid principal loan balance.

§§ 3555.308–3555.349 [Reserved]

§ 3555.350 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

Subpart H—Collecting on the Guarantee

§ 3555.351 Loan guarantee limits.

(a) *Original loan amount.* For the purposes of this section, the term ''Original Loan Amount'' means the original promissory note amount minus any loans funds not actually disbursed to the borrower or on behalf of the borrower at the time the SFHGLP loan was made or thereafter.

(b) *Maximum loss payment.* The maximum payment for a loss sustained by the lender under the SFHGLP is the lesser of:

(1) 90 percent of the Original Loan Amount; or

(2) 100 percent of any loss equal to or less than 35 percent of the Original Loan Amount plus 85 percent of any remaining loss up to 65 percent of the Original Loan Amount.

§ 3555.352 Loss covered by the guarantee.

Subject to § 3555.351, the loss claim payment will be calculated as the difference between the Total Indebtedness on the loan and the Net Recovery Value calculated according to § 3555.353. The Total Indebtedness on the loan includes:

(a) *Principal balance.* The unpaid principal balance;

(b) *Accrued interest.* Accrued interest at the guaranteed loan note rate from the last day interest was paid by the borrower to the settlement date, as defined at § 3555.10;

(c) *Additional interest.* Additional interest on the unsatisfied principal accrued from the settlement date to the date the claim is paid, but not more than 90 days from the settlement date;

(d) *Protective advances.* Principal and interest for protective advances, as described in § 3555.303; and

(e) *Liquidation costs.* Reasonable and customary liquidation costs, such as attorney fees and foreclosure costs. Annual fees advanced by the lender to the Agency are ineligible for reimbursement when calculating the loss payment, as otherwise provided by the Agency.

§ 3555.353 Net recovery value.

The net recovery value of the property is determined differently for properties that have been sold than for properties that remain in the lender's inventory at the time the loss claim is filed.

(a) *Actual net recovery value.* For a property that has been sold when a loss claim is filed, net recovery value is calculated as follows:

(1) The proceeds from the sale plus any other amounts recovered, minus

(2) The amount of actual liquidation and disposition costs provided those costs are reasonable and customary for the area. Costs incurred by in-house staff may not be included.

(b) *Anticipated net recovery value.* For a property that has not sold when a loss claim is filed, net recovery value is calculated as follows:

(1) The value of the property as determined by an Agency liquidation appraisal. The value should be determined as if the property would be sold without the market exposure it would ordinarily receive in a normal transaction, or within 90 days, minus;

(2) The amount of actual liquidation expenses and estimated disposition costs that are reasonable and customary for the area. Costs incurred by in-house staff may not be included.

(i) Actual liquidation expenses are the amount of attorney fees and costs, etc. incurred to acquire title to the property.

(ii) Estimated disposition costs are calculated by Rural Development using

reasonable and customary cost factors appropriate for the area (available in any Rural Development office).

§ 3555.354 Loss claim procedures.

Rural Development may offer authorized lenders a web-based automated system to calculate, submit or update a loss claim request and/or future recovery subject to the requirements of § 3555.356. Manual paper loss claims may continue to be submitted by some lenders. Lenders must make a thorough review of all receipts and expenses prior to submitting a loss claim request. Supplemental adjustments to the initial claim may be considered, as provided by the Agency.

(a) *Sold property.* For property that has been sold, the lender must submit a loss claim within 45 calendar days of the sale. Late claims made beyond this period of time may be rejected or reduced by Rural Development. Instructions and forms may be obtained from Rural Development.

(b) *REO.* If the property has not been sold, the lender must take the following steps:

(1) Notify Rural Development that the property has not been sold so that Rural Development may request an appraisal.

(i) If the property is not located on American Indian restricted land, the lender must notify Rural Development if the property has not been sold within 9 months of foreclosure, or from the end of any applicable redemption period, whichever is later.

(ii) If the property is located on American Indian restricted land, the lender must notify Rural Development if the property has not been sold within 12 months of foreclosure, or from the end of any redemption period, whichever is later.

(2) Upon notification that the property has not been sold, Rural Development will obtain an appraisal at the Agency's expense and provide a liquidation value to the lender. The lender must submit a loss claim within 30 calendar days of receiving the liquidation value from Rural Development. Late claims made beyond this period of time will be rejected.

(c) *Deficiency judgments.* The lender must enforce any judgment for which there are current prospects of collection before submitting a loss claim, and amounts collected must be applied against the outstanding debt. Rural Development will process the loss claim if there are no current prospects for collection.

§ 3555.355 Reducing or denying the claim.

(a) *Determination of loss payment.* Subject to the requirements of § 3555.108, if Rural Development determines that the amount of the loss was increased due to the lender's failure to comply with the conditions of the Loan Note Guarantee, the Agency may reduce or deny any loss claim by the portion of the loss determined was caused by the lender's action or failure to act. The circumstances under which loss claims may be denied or reduced include, but are not limited to, the following lender actions:

(1) Failure to adhere to required servicing and liquidation procedures as set forth in Agency regulations and guidance, including the payment of real estate taxes or hazard insurance when due;

(2) Failure to report defaulted loans to Rural Development within required timeframes;

(3) Failure to ensure that the security property is adequately maintained during liquidation;

(4) Delay in filing a loss claim;

(5) Claiming unauthorized expenses;

(6) Providing unauthorized assistance;

(7) Failure to obtain the required security or maintain the security position;

(8) Violating usury laws;

(9) Negligence, gross negligence or misrepresentation; or

(10) Committing fraud, or failing to report knowledge of fraud or false information.

(b) *Disputes.* If the lender disputes the loss claim amount determined by Rural Development, Rural Development will pay the undisputed portion of the loss claim, and the lender may appeal the decision in accordance with § 3555.4.

§ 3555.356 Future recovery.

The lender must notify the Agency upon sale of an REO property. If the lender recovers additional funds after the loss claim has been paid, the proceeds will be distributed so that the total loss to the Government is equivalent to the loss that would have been incurred had the recovered amount been included in the initial loss calculation.

§§ 3555.357–3555.399 [Reserved]

§ 3555.400 OMB control number.

The report and recordkeeping requirements contained in this subpart are currently with the Office of Management and Budget under review and awaiting approval.

Dated: November 26, 2013.

Douglas J. O' Brien,

Acting Under Secretary, Rural Development.

Dated: November 26, 2013.

Michael Scuse,

Acting Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 2013–29084 Filed 12–6–13; 8:45 am]

BILLING CODE 3410–XV–P

FEDERAL REGISTER

Vol. 78 Monday,

No. 236 December 9, 2013

Part III

Department of Housing and Urban Development

24 CFR Part 3280

Manufactured Home Construction and Safety Standards; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3280

[Docket No. FR–5221–F–02]

RIN 2502–AI71

Manufactured Home Construction and Safety Standards

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

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Manufactured Home Construction and Safety Standards by adopting certain recommendations made to HUD by the Manufactured Housing Consensus Committee (MHCC), as modified by HUD. The National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act) requires HUD to publish in the **Federal Register** all proposed revised construction and safety standards (Construction and Safety Standards, or Standards) submitted by the MHCC. The MHCC prepared and submitted to HUD its second group of recommendations to improve various aspects of the Construction and Safety Standards. HUD is including a number of revisions in this final rule to reflect recent changes to code standards adopted by private standard-setting organizations and recommended by the MHCC or members of the public. However, HUD has decided at this time not to go forward in this final rule with certain revisions contained in the proposed rule due to pending regulations for improving energy efficiency in manufactured homes currently being prepared by the Department of Energy (DOE). HUD has also decided not to move forward with its proposal to establish maximum formaldehyde emissions standards for particleboard materials used in Manufactured Housing flooring applications so that HUD can consider standards for formaldehyde being established by the Environmental Protection Agency (EPA) under the Toxic Substances Control Act.

DATES: *Effective Date:* June 9, 2014. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 9, 2014.

FOR FURTHER INFORMATION CONTACT: Henry S. Czauski, Acting Deputy Administrator, Office of Manufactured Housing Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9164, Washington, DC 20410; telephone number 202–708–6409 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (the Act) authorizes HUD to establish and amend the Federal Manufactured Home Construction and Safety Standards (the Construction and Safety Standards, or Standards) codified in 24 CFR part 3280. The Act was amended in 2000 by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106–569), by expanding its purposes and creating the Manufactured Housing Consensus Committee (MHCC).

As amended, the purposes of the Act (enumerated at 42 U.S.C. 5401) are: ''(1) to protect the quality, durability, safety, and affordability of manufactured homes; (2) to facilitate the availability of affordable manufactured homes and to increase homeownership for all Americans; (3) to provide for the establishment of practical, uniform, and, to the extent possible, performance-based Federal construction standards for manufactured homes; (4) to encourage innovative and cost-effective construction techniques for manufactured homes; (5) to protect residents of manufactured homes with respect to personal injuries and the amount of insurance costs and property damages in manufactured housing consistent with the other purposes of this section; (6) to establish a balanced consensus process for the development, revision, and interpretation of Federal construction and safety standards for manufactured homes and related regulations for the enforcement of such standards; (7) to ensure uniform and effective enforcement of Federal construction and safety standards for manufactured homes; and (8) to ensure that the public interest in, and need for, affordable manufactured housing is duly considered in all determinations relating to the Federal standards and their enforcement.''

In addition, the amended Act generally requires HUD to establish Construction and Safety Standards that are reasonable and practical, meet high standards of protection, are performance-based, and are objectively stated. Congress specifically established the MHCC to develop proposed revisions to the Construction and Safety Standards. The Act provides specific procedures (42 U.S.C. 5403) for the MHCC process.

The MHCC held its first meeting in August 2002 and began work on reviewing possible revisions to the Construction and Safety Standards. As the MHCC proceeded, proposed revisions to the Construction and Safety Standards were divided into sets. The first set of revisions proposed by the MHCC was published as a final rule in the **Federal Register** on November 30, 2005 (70 FR 72024). This final rule is based in part on the second set of MHCC proposals to revise the Construction and Safety Standards published as a proposed rule in the **Federal Register** on July 13, 2010 (75 FR 39871).

Based upon HUD's review of this rulemaking, HUD has decided not to include in this final rule certain revisions contained in the proposed rule due to overlapping jurisdiction and potential conflicts with pending regulations for improving energy efficiency in manufactured homes being prepared by DOE under the Energy Independence and Security Act (Pub. L. 110–140, approved December 19, 2007) (EISA). DOE published an Advance Notice of Proposed Rulemaking soliciting information on the design, construction, financing, operating costs, and other areas for relevance to establishing and implementing energy standards for manufactured housing in 2010 (75 FR 7556, February 22, 2010). Given the DOE rulemaking, HUD has decided at this time not to adopt the proposed modifications to §§ 3280.503, 3280.505, 3280.506, 3280.508, 3280.509,[1] 3280.510, 3280.511, 3280.703, 3280.715(a)(4), and 3280.715(a)(6).

HUD has also decided not to include in this final rule proposals to create a separate formaldehyde emissions limit for particleboard flooring materials of 0.2 ppm and adding medium density fiberboard materials (MDF) as a formaldehyde-regulated material with an emissions limit of 0.3 ppm. HUD is taking this action in view of its statutory requirement to develop reduced formaldehyde emission standards for composite wood products used in manufactured homes that reflect the national standards for formaldehyde emissions from those products that is currently being developed by the EPA under the Toxic Substances Control Act as amended by Section 2, Title VI—Formaldehyde Standards For Composite Wood Products.

Finally, in consideration of the public comments and HUD's experience implementing the program, HUD has

[1] HUD is substituting a table for this section.

also made certain editorial revisions to other sections in the proposed rule. In general, the revisions adopt changes to the codified regulations that reflect code revisions adopted by private standard-setting organizations. HUD declined to adopt some standards in selected instances based on such considerations as cost and public safety. In addition, HUD has decided at this time not to adopt the some code revisions because they have been implemented for only a short period of time and their effect is uncertain.

II. Analysis of Public Comments

The Commenters

The public comment period on the proposed rule closed on September 10, 2010, and five public comments were received. Comments were submitted by a code-making organization, a manufactured housing trade association, two material trade associations, and a member of the public, and covered a wide range of subjects. This section presents the significant issues, questions, and suggestions submitted by public commenters, and HUD's response to these issues, questions, and suggestions.

The commenters were generally supportive of the proposed rule but offered specific recommendations to particular sections of the construction and safety standards. For instance, they supported the proposal's recognition of model codes and other standards and the potential benefit of uniform and effective enforcement of Federal construction and safety standards for manufactured homes. One commenter, for example, stated that the regulation's safety driven requirements will prevent, mitigate, or reduce the number of injuries to people living in HUD-constructed homes and promote honesty among contractors who are inclined to take short cuts that frequently create safety hazards and/or substandard conditions for the people who reside in the homes. Nevertheless, the commenters raised a number of technical cost and safety issues that are discussed in the following section. The following is a summary of the comments received on the proposed rule:

Comment: Requirements for code references for similar building materials should be consistent with the International Residential Code. One commenter noted that it would be preferable for requirements for manufactured housing that are consistent with code references and with requirements for similar materials and building elements regulated by the International Residential Code (IRC), for consistency of enforcement by various compliance authorities. It was noted that standards contained in the proposed rule for areas such as glazing and water conservation were consistent with the IRC. However, the commenter noted there were inconsistencies between the proposed rule and the IRC, including, for example, alternate test methods in the IRC for determining flame spread ratings of thermal insulating materials.

Response: This recommendation was not accepted by HUD. HUD did not include certain IRC standards since those reference standards were not included in the proposed rule and no technical comparisons or cost data was provided between IRC references and HUD reference standards in support of the recommendation.

Comment: Exit Facilities: Exterior Doors Width. A commenter suggested that IRC Section R311, Means of Egress, requires doors to provide a minimum clear width of 32 inches and a minimum height of 78 inches, which are 4 inches larger for both dimensions than HUD's requirements under § 3280.105. The commenter suggested that the difference may be explained by the interest of minimizing costs. (See § 3280.105.)

Response: HUD did not accept this recommendation, as the issue of exterior passage door width for egress is currently being reviewed by the MHCC. In addition, there are two exterior doors required in manufactured homes for egress by the HUD Standards while only one exterior passage door is required for egress by the IRC.

Comment: Toilet Compartment Width. A commenter noted that while the proposed rule is generally consistent with IRC Section R308, Toilet, Bath and Shower Spaces, the proposed rule permits a minimum dimension of 12 inches from a tub edge, while the IRC requires a minimum of 15 inches from the tub edge. The commenter suggests that cost may be a factor. (See § 3280.111.)

Response: HUD did not accept this proposal to increase the minimum dimension of 12 inches to 15 inches from the toilet to a bathtub edge due to room geometry constraints and the generally smaller room sizes in manufactured homes. In addition, it would be burdensome and costly for the industry to redesign toilet compartment spaces for a practice that has been ergonomically acceptable since the inception of the HUD Standards.

Comment: Adopt the Performance Requirement for Individual Thermostatic Pressure Balancing and Combination Control for Bathing Facilities. A commenter recommended that HUD update the ASSE 1016 standard, Automatic Compensating Values for Individual Shower and Tub/Shower Combinations, from the 1996 edition to the 2005 edition. (See § 3280.607 Plumbing Fixtures.)

Response: HUD accepted this comment, and the ASSE 1016 standard, 2005 edition, has been included in the final rule. (See § 3280.607 Plumbing Fixtures.)

Comment: Require sprinkler systems in manufactured housing. A commenter recommended that HUD may want to consider whether sprinkler systems should be required in manufactured housing. The commenter stated that retrofitting manufactured housing units with this type of system might be expensive, but despite the incremental cost impact, using sprinklers to extinguish fires rapidly has proven to save lives and dramatically reduce property damages.

Response: HUD declined to adopt the commenter's recommendation, as adoption of standards in this area would be premature. This issue is currently being considered by the MHCC. Recent fire data analysis prepared by the National Fire Protection Association (NFPA) indicated that HUD Standard units have a similar fire safety record to that of one- and two-family dwelling units. In addition, a comparison of code requirements between manufactured homes and one- and two-family homes shows many fire safety provisions for manufactured homes that are not included in model building codes for one- and two-family homes. Further, there is considerable cost impact to install a sprinkler system in a manufactured home for what would appear to be marginal benefits.

Comment: Include anti-scald valves in the standards. Another commenter expressed support for the proposal to include anti-scald valves in the standards to prevent accidental burn injuries to children and others. (See § 3280.607 Plumbing Fixtures.)

Response: HUD adopted the commenter's recommendation and included it in the final rule. (See § 3280.607 Plumbing Fixtures.)

Comment: Revise the Reference Standards for Polyethylene (PEX) tubing and hot and cold water distribution systems. A commenter suggested updates for the new reference standards for polyethelene tubing and hot and cold water distribution systems.

Response: HUD accepted the commenter's recommendations and incorporated these standards in the final rule (See § 3280.604(b)(2)). However, suggestions to add a number of other plumbing reference standards were not

accepted, since they were not included in the proposed rule. There was also no information provided as to the potential impact of including costs and benefits associated with those proposed revisions to the current plumbing requirements.

Comment: Update Glazing and Reference Standards. A commenter recommended further updates to glazing and skylight reference standards contained in the proposed rule. The commenter stated that AAMA/WDMA 100/I.S 7_00. Voluntary Specifications for Skylights is no longer maintained as an industry standard, and had been replaced by the applicable provisions of AAMA/WDMA/CSA 101/1.S.2/A440–08: North American Fenestration Standard Specification for Windows, Doors, and Skylights, which is the appropriate reference standard for the 3280 requirements. (See §§ 3280.403(b)(2), 3280.403(e)(3).)

Response: HUD accepted the commenters' recommendations to upgrade the standards beyond those in the proposed rule as the prior voluntary standard for skylights is no longer available and has been replaced in §§ 3280.403(b)(2) and (e)(3) of the HUD Standards by the AAMA/WDMA/CSA 101/1.S.2/A440–08, North American Fenestration Standard for Windows, Doors, and Skylights.

Comment: Safety Glazing: One commenter noted that glass and glazed openings requirements under the proposed rule are generally consistent with IRC section R308, Glazing. Another commenter suggested updating the requirements for safety glazing to the 2004 standard.

Response: HUD agreed with the commenters and has updated the ANSI Z97.1 reference Standard for Safety Glazing Materials used in Buildings—Safety Performance Specifications and Methods of Test in the final rule to the 2004 edition (See § 3280.113(c).)

Comment: Allow a microwave to serve as the cabinet protection for fire safety. A commenter supported the proposed revision to allow a microwave to serve as the cabinet protection for fire safety without the current requirement for a metal hood. The commenter stated that such proposed requirement would provide an alternative means of complying with current kitchen cabinet protection requirements and reduce materials and labor costs while providing the necessary fire protection. The commenter recommended that the provision be clarified to specify an ''Over-the-range'' microwave oven. (See § 3280.204, Kitchen cabinet protection.)

Response: HUD generally agrees with the commenter. HUD, therefore, allows use of a microwave oven is as an alternative compliance method to protect combustible kitchen cabinets in those situations where the oven is certified to comply with the requirements of Microwave Cooking Appliances in UL 923–2002, is installed between the cabinet and range, and is equivalent in fire protection to the metal range hood otherwise required by this section.

Comment: Requirements for thermal insulating materials. A commenter noted that the requirements for thermal insulating materials in the proposed rule are generally consistent with IRC standard 225–96. The commenter noted that the test method referenced in § 3280.207 is a standard of the NFPA while the two test methods permitted for determining the flames spread index in IRC are 302.10 and ASTM International E 84 or UL 723.

The commenter suggested that HUD consider allowing these two alternate/additional test methods for determining the flames spread index, to permit additional flexibility to manufacturers. The commenter noted that the referenced (NFPA) standard was issued in 1996 and that the ASTM E 84 standard is available in an up-to-date 2010 version. The UL standard was also issued more recently than 1996. The addition of the two alternate test methods would have no incremental cost effect, and may reduce testing costs for manufacturers. (See § 3280.207.)

Response: HUD did not include the additional reference standards for flame spread testing in the final rule that were suggested by the commenter, as there was no technical information provided as to the comparability of the results that would be achieved by use of the alternate testing standards recommended.

Comment: The standards should provide for the sizing of heating equipment to reflect the anticipated location. The commenter explained that the current requirements result, in some instances, in the sizing of equipment indicating the most extreme temperatures rather than the actual heating design temperature. The commenter submitted that the wide variance in temperature creates over-compensation in the design and provision of heating equipment and results in energy inefficiency, as well as in operating economy losses and declines in consumer comfort. (See § 3280.510.)

Response: HUD is not including in this final rule this proposed modification to § 3280.510 in view of the DOE rulemaking for improving energy efficiency in manufactured homes noted earlier in this preamble.

Comment: HUD should count the window sash toward the opening size requirement for egress. A commenter noted the cost impacts associated with the proposed change to prohibit removal of the window sash for determining the opening size for egress windows, and suggested maintaining the current standard. (See § 3280.404(c)(2).)

Response: HUD declined to adopt the commenter's recommendation to maintain the current standard, which allows the sash to be removed to meet the egress window size. HUD reconsidered the original standard in the proposed rule to permit the sash to be removed to meet the egress window size. HUD believes that safety considerations outweigh the cost impact. Accordingly, HUD adopted a change in the final rule to set the standard window size at a level that includes the sash. The sash cannot be removed to meet the egress window size requirements.

Comment: Adopt the Alternative Language in the proposed rule for Comfort Cooling Certificate and Information. The proposed rule provides language that must be included in the comfort cooling certificate for homes in which a central air-conditioning system is provided by the home manufacturer. It also provides an alternative example certificate that contains language explaining the importance of orientation and exposure to the sun. (See § 3280.511.)

Response: HUD is not including in this final rule this proposed modification to § 3280.511, in view of the DOE rulemaking for improving energy efficiency in manufactured homes as noted earlier in this preamble.

Comment: Materials Update. A commenter stated that the standards for Crosslinked Polyethylene (PEX) tubing in the proposed rule are out of date and considered it important that HUD use the updated standards. The updated standards identified by the commenter were Standard Specification for Crosslinked Polyethylene (PEX) Tubing—ASTM F876 2010, and Standard Specification for Crosslinked Polyethylene (PEX) Hot and Cold Water Distribution Systems ASTM F877 2007.

Response: HUD accepted this comment and updated the ASTM F876 and ASTM F877 standards. (See § 3280.604(b)(2).)

Comment: Plumbing Fixture Standard Update. A commenter suggested that the references to ASSE–1016 1996 may be out of date, and unusable by manufacturers. The commenter

suggested an updated reference. (See § 3280.607.)

Response: HUD accepted this comment, and the ASSE 1016 standard, 2005 edition, has been included in the final rule. (See § 3280.607 Plumbing Fixtures.)

Comment: Eliminate the requirement to attach operating instructions to each appliance. A commenter also suggested that it is unnecessary to continue to require appliance operating instructions to be attached to each appliance if they are also required to be provided in the homeowners' manual. (See § 3280.711 Instructions.)

Response: HUD declines to adopt the recommendation. HUD has found that the instructions attached to the appliance are often discarded after the appliance is initially operated by consumers. Additionally, HUD notes that the requirement to have the instructions also provided in the manual is needed for future appliance maintenance.

Comment: Circulating Systems. A commenter noted that the proposed rule requires Class 1 air ducts fiberglass to be no closer than 3 feet from the furnace bonnet or plenum and requires furnace supply plenums to be constructed of Class 0 air duct (metal), extending at least 3 feet from a heat exchanger along the centerline of the airflow. The commenter stated that this proposed revision is contrary to a number of the instructions provided by furnace manufacturers and is not required by the IRC for single-family site-built housing. (See § 3280.715.)

Response: HUD did not accept this comment, as no technical data was provided by the commenter in support of eliminating this fire safety requirement.

Comment: Modify requirements for placement of electrical distribution panels. A commenter suggested that HUD continue to allow the electrical distribution panel to be located in a clothes closet and be ''grandfathered in'' for existing designs. (See § 3280.804.)

Response: HUD declined to adopt the commenter's suggestion to grandfather in existing designs, because doing so would conflict with fire safety considerations and requirements in the National Electrical Code. (See § 3280.804(f).) These considerations outweigh any design requirements associated with relocating the electrical panel outside of the closet area.

Comment: Coordination with Appendix E. A commenter discussed IRC Appendix E, which describes the means and scope of inspections of manufactured housing installed on privately owned lots within a jurisdiction that adopts the Appendix. A commenter stated that because appendices are not mandatory unless adopted by the authority having jurisdiction, there may be issues that HUD may wish to coordinate with the requirements of Appendix E.

Response: HUD declined to adopt the commenter's recommendations because Appendix E deals with siting, which is not a construction standard, and is addressed under another proposed rule.

III. This Final Rule

The final rule will revise certain sections of the Construction and Safety Standards and will also revise the incorporated reference standards, where indicated. Most of the changes will codify existing building practices or conform HUD standards to previously issued HUD interpretive bulletins or existing building codes.

A. Incorporation by Reference

The final rule revises § 3280.4, by allowing the manufacturer to select which reference standard to incorporate into its designs and construction, where two or more reference standards are incorporated by reference for the same application or requirement. The final rule will not require that manufacturers comply with the most restrictive aspects of two or more standards in their designs and construction if more than one reference standard exists. While this change reflects a relaxation of current requirements by providing manufacturers with more flexibility in selecting materials, components, etc., to utilize in their production of homes, it is not a significant change. This is because the areas in which there are duplicate reference standards are very few and, for those that do exist, HUD believes the degree of differences in performance and safety between the reference standards (i.e., the restrictive and less restrictive) are not significant. HUD is also using this final rule to revise § 3280.4, its centralized incorporation by reference section, to conform to updated **Federal Register** drafting guidance.

B. Planning Considerations

The final rule revises § 3280.105(a)(2), by establishing the method to be used when measuring the travel distance from the bedroom door to an exit door, a distance that must not exceed 35 feet. The final rule clarifies and standardizes the current method used by manufacturers to measure the travel distance as the distance from the center of the bedroom door to the center of the exit door.

The final rule also revises the provisions for exit facilities/exit doors in § 3280.105(b), to permit door seals to reduce the minimum required exterior door opening by one inch. This change will not change current construction requirements for exterior passage doors. Rather, it codifies an existing practice that has been previously permitted under Interpretative Bulletin B–1–76.

The final rule also revises and makes editorial revisions to provisions for toilet requirements in § 3280.111, by adding an additional minimum clearance dimension from the centerline of a toilet to any adjacent wall of at least 15 inches. This standard is consistent with both current design practice in manufactured homes and with similar requirements in residential building codes.

The final rule revises § 3280.113, by adding additional requirements regarding where safety glazing materials are to be located and how they are to be tested to determine whether they can be considered safety glazing materials. The rule also makes the existing requirements for location and testing of safety glazing materials consistent with other model building codes and residential construction practices. As a result, the final rule provides that safety glazing materials are any glazing material capable of meeting the requirements of the Consumer Product Safety Commission (CPSC) or the Standard for Safety Glazing Materials used in Buildings—Safety Performance Specifications and Methods of Test used in ANSI Z97.1–2004.

C. Fire Safety

The final rule adds an alternative means of complying with the kitchen cabinet protection requirements in § 3280.204, by allowing the metal hood, 5/16-inch gypsum board, and 3/8-inch air space required by this section, to be omitted when a microwave oven certified as conforming to Underwriters Laboratories Standard UL 923–2002 is installed between the cabinet and the range. However, since the microwave oven would protect only combustible kitchen cabinet materials over the cooking range, all exposed surfaces along the bottom and sides of the cabinet also need to protected by at least 5/16-inch gypsum board or the equivalent, in accordance with paragraph (a) of this section.

The final rule adds fire safety and performance requirements for all types of thermal insulating materials under new section § 3280.207, Requirements for Thermal Insulating Materials. The current standards require evaluation of fire performance characteristics only of

foam plastic insulating materials. Because thermal insulation materials used in manufactured homes are the same type of insulation materials and characteristics used in residential building codes, they are expected to also comply with the fire-resistive properties in this final rule.

D. Body and Frame Requirements

The final rule revises § 3280.305(c)(1)(i) by clarifying that the net uplift roof load must not be reduced by the dead load of the roof structure for the purposes of preparing engineering calculations or in performing structural load testing. This change for roof uplift design makes no change to current engineering design practices. Rather, it codifies the current practices permitted under Interpretative Bulletin D–4–76.

The final rule makes editorial revisions and also clarifies existing provisions in § 3280.305(c) that address areas where state or local building codes requirements exceed the provisions for design roof loads and wind loads required by HUD Standards. For consideration of state or local requirements for wind loads, the final rule clarifies that wind mapping data or records will need to indicate that higher design loads are necessary.

As noted earlier in this preamble, HUD has decided not to include in this final rule its proposed modifications to lower the existing requirements for control of formaldehyde emissions for particleboard materials, or to add new requirements to limit formaldehyde emissions from medium-density fiberboard materials in § 3280.308. HUD intends to review the standards for formaldehyde currently being established by EPA under the Toxic Substances Control Act.

E. Testing

The final rule contains a conforming amendment to § 3280.403, for the testing of skylights that is consistent with the revisions to § 3280.305(c)(3)(iv) of the Construction and Safety Standards published in the **Federal Register** on November 30, 2005. The conforming amendment provides for skylights to be certified as complying with the AAMA/WDMA/CSA 101/1.S.2/A440–08, North American Fenestration Voluntary Standard Specification for Windows, Doors, and Skylights.

Section 3280.404(c)(2) of the final rule will now prohibit any window that requires the removal of a sash to meet the egress size provisions of the Manufactured Home Construction and Safety Standards from being classified as an egress window. This change will enhance egress and occupant safety in the event of an emergency.

F. Subpart F

The final rule revises § 3280.504(c) by allowing the use of liquid-applied vapor retarders, so long as a nationally recognized testing agency has approved its use on the specific substrate to which it is to be applied. This addition codifies the current practice of accepting liquid-applied vapor retarders as an alternative to other conventional vapor retarder materials required by this section.

Section 3280.509(c) is revised by replacing the graph for determining the effective R values of compressed insulation with a table that allows for more precisely determining the effects on R values of nonuniform and uniform insulation compression for batt and blown insulation. This will provide a more accurate method for determining effective R value requirements when insulation is compressed or used in sloping roof cavities and will result in more accurate projections of heat loss and heat gain for manufactured homes than determined by the current graphical method.

As noted earlier in this preamble, HUD has decided not to forward with its proposed modifications to §§ 3280.503, 3280.505, 3280.506, 3280.509, 3280.510, and 3280.511, because of standards for energy efficiency being developed by DOE under the Energy Independence and Security Act.

G. Plumbing Systems

The final rule makes a conforming amendment to § 3280.603(a)(2) on water conservation to limit each water closet to 1.6 gallons of water per flush. Section 3280.607(b)(2)(iii) was previously amended in the final rule published in the **Federal Register** on November 30, 2005, by requiring all water closets to be low-consumption (1.6 gallons per flush) closets. This conforming amendment will conserve water and help assure the continued availability of adequate water supplies, as well as reduce wastewater flows.

The final rule revises § 3280.603(b)(4), by adding a requirement that the installation instructions required by § 3280.306(b)(4) include a statement that any heat tape or pipe heating cable used be listed for use in manufactured homes. The final rule also revises this section with regard to the requirements for the receptacle outlet for connection of the heat tape or pipe heating cable to conform with the amended provisions to § 3280.806(d).

The final rule revises the table in 3280.604(b)(2), by incorporating standards for the installation of cross-linked polyethylene (PEX) plastic cold and hot water systems. This will permit the use of PEX plastic piping as an alternate piping material to other materials that may currently be used to supply hot and cold water systems.

The final rule revises § 3280.606(a)(2), by allowing a two or three compartment sink, up to three individual sinks or up to three lavatories and be connected to one ''P'' trap, to be considered as a single fixture for the purposes of drainage and ventilation under certain circumstances. This will allow more fixtures to be connected to one ''P'' trap than is currently permitted by the Standards and would be consistent with other residential model plumbing codes for similar three-fixture configurations.

The final rule adds a new requirement in § 3280.607(b)(3)(v) for shower, bath, and tub-shower combination valves to be either balanced pressure, thermostatic, or a combination of mixing valves that conforms to the requirements of ASSE 1016–2005, Performance Requirements for Automatic Compensating Values for Individual Shower and Tub/Shower Combinations. These valves will be required to have handle position stops that are adjustable to a maximum setting of 120 °F to prevent scalding and burn injuries to occupants from very hot water. This change will reduce the number of injuries and deaths resulting from tap water scald burns. Further, the Centers for Disease Control and Prevention (CDC) and other organizations report that a majority of scald burn victims are young children whose injuries may have been prevented by the use of an anti-scald valve.[2] In addition, this revision is consistent with IRC requirements for single- and two-family dwellings.

The final rule revises § 3280.607(b)(5)(ii) for the standpipe height required for laundry tubs from 30 inches to 42 inches above its trap and will require the standpipe to terminate in an accessible location no lower than the top of the clothes washing machine. This increase in standpipe height is also consistent with the IRC requirements for single- and two-family dwellings and will help prevent backflow and improve operation of clothes washers installed in manufactured homes.

The final rule revises § 3280.610(e), by permitting fixture drains that serve only a single lavatory fixture to be 1¼ inches in diameter. This reduction in drain size for a single lavatory is not

[2] Centers for Disease Control and Prevention and U.S. Department of Housing and Urban Development. *Healthy Housing Reference Manual,* Atlanta: U.S. Department of Health and Human Services, 2006.

significant and would provide adequate drainage flow and venting for individual lavatory fixtures.

The final rule revises the requirements for anti-siphon trap vent devices in § 3280.611(d), by redefining these devices as mechanical vents (see § 3280.602) and by expanding the requirements to also include gravity-operated mechanical vents (also known as air admittance valves). This will allow manufacturers to use either type of mechanical vent (anti-siphon vent or air admittance valve) for venting of certain plumbing fixtures. In addition, § 3280.611(f) is expanded to permit vent terminals either through wall extensions or into mechanical vent devices.

H. Heating, Cooling, and Fuel Burning Systems

The final rule revises § 3280.705(b) by permitting corrugated stainless steel tubing (CSST) systems to be used in gas piping systems, provided that these systems are installed in accordance with the requirements of ANSI/IAS LC–1–1997, Fuel Gas Piping Systems Using Corrugated Stainless Steel Tubing. In addition, a table for sizing CSST systems is being added in § 3280.705(d). Paragraph (h) of this section is also revised by permitting CSST to be run inside walls, floors, partitions, and roofs under specified conditions. CSST piping is currently permitted to be used in all other residential construction as a gas piping system by the model codes and state and local building codes.

Sections 3280.707(a) and (d) and 3280.714(a) revise the energy efficiency and energy conservation requirements for comfort heating systems, water heaters, and cooling appliances so that they comply with the provisions of 10 CFR part 430, Energy Conservation Program for Consumer Products, the current applicable requirements for these appliances. Since the energy efficiency requirements cited in the proposed rule were determined to be no longer applicable to these appliances, they have been replaced by the above-cited requirements in the final rule. In addition, HUD has determined that these energy-efficiency requirements for appliances are not affected by the energy-efficiency standards being developed by DOE under the Energy Independence and Security Act.

Section 3280.715 is revised by eliminating the use of Class 2 ducts and by deleting their definition from § 3280.703, by requiring manufacturer's instructions to indicate that crossover ducts are not to be in contact with the ground and must be properly supported, and by requiring air supply crossover ducts in all Thermal Zones to have a minimal thermal resistance of R–8, unless installed in a basement. This change, eliminating the use of Class 2 air handling ducts, is consistent with the requirements of the IRC for one- and two-family dwellings, and would improve the fire safety and performance of air handling ducts by requiring the use of Class 0 or 1 ducts, which are more fire resistive than Class 2 ducts. The revision to increase the thermal resistance for crossover ducts will reduce heat loss and improve the energy efficiency of crossover ducts between sections of multisection manufactured homes.

As noted in this preamble, HUD has decided not to forward with its proposed modifications to §§ 3280.715(a)(4) and (a)(6).

I. Electrical Systems

The final rule revises § 3280.803 by requiring that a 1¼ inch maximum continuous raceway is to be used when installing a power supply cord within the wall from the bottom of the distribution panel to the underside of the floor. This change and clarification is consistent with the current requirements of the National Electrical Code (NEC), NFPA 70–2005, which is currently incorporated by reference in the Manufactured Home Construction and Safety Standards. In addition, the requirement for installing service equipment in or on the home is revised in paragraph (k)(3) of this section by referencing the appropriate articles of the NEC, NFPA 70–2005.

Section 3280.804(f) is amended by requiring the distribution panelboard to be located in an accessible location and not located in a bathroom or clothes closet. This revision is consistent with requirements for acceptable locations for electrical distribution panels in residential model codes and with the NEC.

The final rule amends § 3280.805, by requiring all countertop outlets in the kitchen to be supplied by not less than two of the small appliance branch circuits. However, one or more of the small appliance branch circuits may also supply other receptacle outlets in the kitchen, pantry, dining room, and breakfast room. In addition, the final rule amends § 3280.805(a)(3)(vi) by requiring that bathroom receptacle outlets be supplied by at least one 20 ampere branch circuit. While such circuits can have no other outlets, it is permissible to place the outlet for a heat tape or pipe heating cable on a bathroom circuit, provided that all of the bathroom outlets are on the load side of the ground fault circuit interrupter.

Section 3280.806(d) is revised by not including receptacle outlets in the floor that are 18 inches or more from the wall as part of the required receptacle outlets for the room; by permitting the heat tape or pipe heating cable outlet to be on the bathroom circuit, provided that all bathroom outlets are on the load side of the ground fault circuit interrupter; and by requiring receptacles in any countertop to not be in a face-up position. These changes are consistent with the requirements in residential model codes and the NEC.

J. Revisions to Standards Incorporated by Reference (Reference Standards)

The following is a list of the standards incorporated by reference by this final rule. Each reference standard is preceded with an indicator to identify the type of change being made. A new reference standard being added is indicated by the designation ''N,'' while a reference standard being updated is indicated by the designation ''U.'' The sections of the Construction and Safety Standards that are being amended by each modification are also shown on the right of each reference standard being added or updated.

N—AAMA/WDMA/CSA 101/I.S.2/A440–08.		North American Fenestration Standard Specification for Windows, Doors and Skylights.	3280.403(b), 3280.403(e).
U—ANSI Z21.23	1993	Gas Appliance Thermostats	3280.703.
N—ANSI A208.2	2002	Medium Density Fiberboard (MDF) for Interior Applications	3280.304(b).
N—ANSI/IAS LC–1	1997	Fuel Gas Piping Systems Using Corrugated Stainless Steel Tubing.	3280.705(b).
U—ANSI Z97.1 2004	2004	Standard for Safety Glazing Materials used in Buildings—Safety Performance Specifications and Methods of Test.	3280.113(c).
U—APA S 812R	1998	Design and Fabrication of Glued Plywood Lumber Beams Plywood Design Supplement #2.	3280.304(b).
U—APA U 814H	1993	Design and Fabrication of Plywood Sandwiched Panels Plywood Design Supplement #4.	3280.304(b).

U—APA U 813L	1996	Design and Fabrication of Plywood Stressed Skin Panels, Plywood Design Supplement #3.	3280.304(b).
N—APA E30R	2001	Engineered Wood Construction Guide	3280.304(b).
N—ASSE 1016	2005	Performance Requirements for Automatic Compensating Values for Individual Showers and Tub/Shower Combinations.	3280.607(b).
U—ASTM C564	1997	Standard Specification for Rubber Gaskets for Cast Iron Soil Pipe and Fittings.	3280.604(b)(2), 3280.611(d).
U—ASTM C920	2002	Standard Specification for Elastomeric Joint Sealants	3280.611(d).
U—ASTM D3953	1997	Standard Specification for Strapping, Flat Steel, and Seals	3280.306(b), 3280.306(g).
U—ASTM D4635	2001	Standard Specification for Polyethylene Films Made from Low-density Polyethylene for General Use and Packaging Applications.	3280.611(d).
N—ASTM F876	2010	Standard Specification for Crosslinked Polyethylene (PEX) Tubing.	3280.604(b)(2).
N—ASTM F877	2007	Standard Specification for Crosslinked Polyethylene (PEX) Plastic Hot- and Cold-Water Distribution Systems.	3280.604(b)(2).
U—NFPA 31	2001	Standard for the Installation of Oil Burning Equipment	3280.703, 3280.707(f).
N—NFPA 255	1996	Standard Method of Surface Burning Characteristics of Building Materials.	3280.207(a).
N—NFPA 253	2000	Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Source.	3280.207(c).
U—NIST PS 2–04	2004	Voluntary Product Standard Performance Standard for Wood-Based Structural-Use Panels.	3280.304(b).
N—RADCO DS–010	1991	Decorative Gas Appliances for Installation in Solid Fuel Burning Appliances.	3280.703.
N—UL 923	2002	Microwave Cooking Appliances	3280.204(c).
N—CAN/ULC S102.2–M88	1988	Standard Method of Test for Surface Burning Characteristics of Flooring, Floor Covering, and Miscellaneous Materials and Assemblies.	3280.207(b).
U—UL 181	2003	Factory Made Air Ducts and Air Connectors	3280.702, 3280.703, 3280.715(a).

K. Accessibility Requirements for Persons With Disabilities

In some situations, manufactured housing units subject to HUD's Manufactured Home Construction and Safety Standards may be provided through a program or activity that receives federal financial assistance from HUD. When this is the case, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and HUD's implementing regulations at 24 CFR part 8 are applicable, including the requirements at 24 CFR 8.22 that address accessibility in new construction. However, these requirements are not applicable to any individual or buyer that obtains Federal Housing Administration financing when purchasing a manufactured housing unit. When working with a recipient of HUD funds, manufacturers must be prepared to produce manufactured housing units that meet the accessibility standards provided in 24 CFR part 8. There regulations currently incorporate the Uniform Federal Accessibility Standards (UFAS) (see 24 CFR 8.32).

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This rule is not a ''significant regulatory action,'' as defined in section 3(f) of the Order, and it was not reviewed by OMB. As the preamble highlights, this rule amends several construction and safety standards under the National Manufactured Housing and Construction and Safety Standards Act of 1974. However, most of the changes codify existing practices or conform HUD standards to existing building codes.

Only two standards included in this rule have an impact on the production cost of manufactured homes: the requirement that shower and bath valves use anti-scald mixing valves, and the increase in minimum insulation levels for cross-under ducts. HUD's review of this final rule determined that it will impose costs equaling $4.057 million and create discounted present value of benefits totaling $6.264 million to $14.069 million, depending on the discount rate. HUD's analysis, as discussed herein, uses a cohort analysis to examine the benefits and costs generated by these changes as applied to a single year's production of manufactured homes. More specifically, the costs associated with these changes are one-time costs at the time of production, while the benefits from the anti-scald valve and increased insulation accrue throughout the life of the home.

Currently, producers of manufactured housing may use non-pressure balanced mixing valves in bathtubs and showers. The cost of non-pressure balanced mixing value generally totals $30 per valve. This final rule estimates the per-unit cost to producers to purchase pressure balanced/anti-scald mixing valve to be $55, or an increase of $25 per valve. The average number of mixing valves is one per single-section home and two per multisection home. Thus, the cost is $25 per single-section home and $50 per multisection home.

The number of annual manufactured home placements since 1999 has decreased considerably. The annual rate of placements in 2009 was estimated at 58,100. Of these, 20,900 were estimated to be single-section homes, 36,000 were estimated to be double-section homes, and 1,200 were estimated to have more

than two sections. Although this trend in annual placements has continued to decrease, this analysis assumes an annual placement of 58,100 manufactured homes. In addition, this analysis assumes that the cost of requiring the use of an anti-scald valve at the point of production of the home is less than installation at some later time. This assumption is based on the fact that replacing a mixing valve with an anti-scald valve at some later date would require the use of a licensed plumber for several hours to make the change and a higher cost to purchase the anti-scald valve(s) due to the volume purchasing power of manufacturers as compared to individual purchasers.

Accordingly, based on this annual placement rate, the total cost of the anti-scald valve requirement is $522,500 for single-section homes ($25 per home * 20,900 single-section homes). For multisection homes, the total cost is $1.86 million ($50 per home * 37,200 multisection homes). The combined cost totals $2.383 million. (Note: These cost estimates are conservative, as the annual number of placements since 2010 did not exceed the rate of placements assumed in the analysis.)

The second cost comes from the increase in the minimum insulation levels for cross-under ducts. These ducts are used in multisection homes to carry heat from one section to another. Thus, there is no cost increase for single-section homes. The cost per square foot of insulation for multisection homes would increase from $1.25 per square foot of R–4 insulated cross-under duct to $3.50 per square foot of R–8 insulated cross-under duct, or $2.25 per square foot. On average there are 20 square feet of insulation needed per multisection home. Thus, the total cost of increasing the minimum insulation level is $1.674 million ($2.25 per square foot * 20 square feet per home * 37,200 homes). (Note: These cost estimates are conservative, as the annual number of placements since 2010 did not exceed the rate of placements assumed in the analysis.)

In estimating the benefits of these two requirements, HUD has considered that requiring anti-scald valves would reduce the number of injuries and deaths resulting from tap water scald burns. Although statistics specific to scald burns in manufactured homes are unavailable, according to Safe Kids, a nonprofit organization dedicated to preventing accidental childhood injury, hot tap water accounts for nearly 25 percent of all scald burns among children and is associated with more deaths and hospitalizations than any other hot liquid burns. Statistics reported by the CDC indicate that almost 3,000 people are hospitalized annually due to scald burns from tap water in the home.[3] The Safe Kids organization, however, reports that in 2002, 22,600 children received emergency room treatments for scald burns,[4] approximately 25 percent (5,560) coming from hot tap water. This analysis uses the CDC estimate of 3,000, which is a conservative estimate that represents the lower bound of scald injuries prevented.

The Safe Kids organization estimates that hospital costs for admitted scald burn patients average $22,700.[5] Although this estimate includes only children under the age of 14, this group comprises a large percentage of scald burn injuries. Finally, based on the number of occupied housing units in the 2007 American Housing Survey (AHS),[6] newly placed manufactured housing accounts for 0.05% of occupied housing units. If tap water scalds are evenly distributed across all housing units,[7] then 1.5 burns (3,000 total scald burns * 0.05% in newly placed manufactured housing) could be prevented annually for annual savings of $35,744 (3,000 burn victims * 0.05% in manufactured homes * $22,700 in hospital costs).[8] OMB Circular A–94, which provides guidance on economic analyses required under Executive Order 12866, requires the present discounted value of annual benefits using alternative discount rates 3 percent and 7 percent. The discounted present value of savings from the use of anti-scald valves totals $1.227 million using the 3 percent rate and $0.546 million using the 7 percent rate. Note that using the Safe Kids estimate of 5,560 would increase these amounts to almost 3 scald burns and $66,246 in hospital care avoided annually. The discounted present value of savings assuming the higher estimate of burns totals $2.274 million using the 3 percent discount rate and $1.013 million using the 7 percent discount rate.

In addition to prevented injuries and hospitalizations, the anti-scald valve requirement will also reduce the number of deaths resulting from scald burns. Aside from the 3,000 to 5,560 scald burns occurring each year, the National Coalition to Prevent Childhood Injury estimates that 100 deaths result from scald burns annually. As explained above, newly placed manufactured housing represents 0.05 percent of occupied housing units. Thus, if tap water scalds are evenly distributed across all housing units, then 0.05 burns annually, or one death every 20 years, would be prevented. U.S. Federal Government estimates of the value of a human life range from $5 million used by the Consumer Product Safety Commission to $7.22 million used by the EPA. Using the lower estimate of $5 million, the discounted present value of prevented deaths from the use of anti-scald valves totals $9.010 million using the 3 percent rate and $4.012 million using the 7 percent rate.

The insulation requirement will increase the energy efficiency of manufactured homes, which will decrease annual energy costs for homeowners. Based on estimates from the DOE's Energy Gauge model, owners of multisection homes, to which this requirement applies, would save approximately $3 in energy costs annually. Thus, the total annual benefits of this provision is $111,600 ($3 per home * 37,200 homes). Calculating the present value of the stream of benefits into the future yields a discounted present value of $3.832 million in energy savings using the 3 percent discount rate and $1.706 million using the 7 percent discount rate.

A summary of HUD's calculation of benefits from the anti-scald valve and insulation requirements follows:

[3] Centers for Disease Control and Prevention and U.S. Department of Housing and Urban Development. *Healthy Housing Reference Manual.* Atlanta: U.S. Department of Health and Human Services, 2006.

[4] Safe Kids Web site: *http://www.usa.safekids.org/tier3_cd.cfm?folder_id=540&content_item_id=1011.*

[5] National SAFE KIDS Campaign (NSKC). Burn Injury Fact Sheet. Washington (DC): NSKC, 2004.

[6] See 2007 AHS, Table 2–1.

[7] If state and local codes that regulate traditional ''stick-built'' housing predominantly require anti-scald valves, then this distribution may not be even across housing types. For this reason, manufactured homes may account for a larger than proportionate share of scald burns.

[8] Anti-scald valves decrease the maximum water temperature to 120 degrees. At this temperature, it would take 8 minutes of exposure to receive second-degree burns and 10 minutes for third-degree burns. While this does not completely eliminate the risk of scald burns, this risk does not need to be completely eliminated for benefits to be realized.

BENEFITS OF FINAL RULE
BENEFITS OF ANTI-SCALD VALVE REQUIREMENT

Value of Injuries Prevented	
Annual hospitalizations due to scald burns from tap water	3,000
New manufactured housing share of total occupied housing units	0.05%
Average Cost of Scald Burn Victim	22,700
Annual Value of Benefits	$35,744
Discounted Present Value (3% Discount Rate)	$1,227,178
Discounted Present Value (7% Discount Rate)	$546,358

Value of Deaths Prevented	
Annual deaths due to scald burns from tap water	100
New manufactured housing share of total occupied housing units	0.05%
Value of life	5,000,000
Value of Benefits	$262,438
Discounted Present Value (3% Discount Rate)	$9,010,323
Discounted Present Value (7% Discount Rate)	$4,011,532

Benefits of Insulation Requirement			
	Single	Multi	Total
Number of Homes	20,900	37,200	58,100
Annual Savings per Home	0.00	3.00	.....
Annual Value of Benefits	$0	$111,600	$111,600
Discounted Present Value (3% Discount Rate)			$3,831,566
Discounted Present Value (7% Discount Rate)			$1,705,872

Discounted Present Value of Benefits of Rule		
	Discount rate	
	3%	7%
Anti-Scald Valve Requirement	$10,237,502	$4,557,890
Injuries Prevented	*1,227,178*	*546,358*
Deaths Prevented	*9,010,323*	*4,011,532*
Insulation Requirement	3,831,566	1,705,872
Discounted Present Value of Benefits	$14,069,068	$6,263,762

Sources:
[1] American Burn Association.
[2] American Housing Survey (AHS), U.S. Department of Housing and Urban Development.
[3] National Safe Kids Campaign.

In summary, this final rule will impose costs equaling $4.057 million and create discounted present value of benefits totaling $6.264 million to $14.069 million, depending on the discount rate. Thus, the total impact of this rule, the sum of the total costs and benefits, equals between $10.321 million and $18.126 million annually. (Note: These cost estimates are conservative, as the annual number of placements since 2010 did not exceed the rate of placements assumed in the analysis.)

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339.

Paperwork Reduction Act

The modified information collection requirements contained in this final rule, at §§ 3280.510, 3280.511, 3280.804, and 3280.813, have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. OMB has issued HUD the control number 2502–0253 for the information collection requirements under the current Manufactured Housing Construction and Safety Standards Program.

The public reporting burden for this modified collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. These modifications to the existing two labels would result in

no additional burden hours for completing the information collection currently accepted under control number 2502–0253.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule will not impose any Federal mandates on any state, local, or tribal government or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. This rule regulates establishments primarily engaged in making manufactured homes (NAICS 32991). The Small Business Administration's size standards define an establishment primarily engaged in making manufactured homes as small if it does not exceed 500 employees. Of the 222 firms included under this NAICS definition, 198 are small manufacturers that fall below the small business threshold of 500 employees. The final rule will apply to all of the manufacturers. The rule would thus affect a substantial number of small entities, but would not have a significant economic impact on these small entities.

Based on an analysis of the costs and the fact that a small manufacturer would just as likely produce homes at the higher end of the cost spectrum as would a major producer, evaluating the effect of the increase is not discernible based on the size of the manufacturing operation. For the reasons stated below, HUD knows of no instance of a manufacturer with fewer than 500 employees that would be economically affected significantly by this rule. As the preamble discusses, the overwhelming majority of the revisions to the Construction and Safety Standards proposed by this rule are directed to relieving burden on all manufacturers by having the Standards be consistent with current design and construction standards or state and local codes. Reducing the differences between the Federal standards for design and construction of manufactured homes with current industry standards reduces burden for all manufacturers.

As discussed under the ''Regulatory Planning and Review'' section of this preamble, the annual economic impact of this rule is not significant, since the changes made by this rule are largely changes conforming to current industry practices and current building codes. This assessment shows that this does not represent a significant economic effect on either an industry-wide or per-unit basis.

The relatively small increase in cost for the manufacturer associated with this proposed rule would not impose a significant burden on a small business for manufacturing homes that can cost the purchaser between $40,000 and $100,000. Therefore, although this rule would affect a substantial number of small entities, it would not have a significant economic impact on them. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) Imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This final rule does not have federalism implications, within the meaning of the Executive Orders, and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

V. Incorporation by Reference

These incorporated standards are approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these standards may be obtained from the organization that developed the standard. As described in § 3280.4, these standards are also available for inspection at HUD's Office of Regulatory Affairs and Manufactured Housing and the National Archives and Records Administration (NARA). This final rule incorporates standards developed by the following organizations:

AAMA—American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173, telephone number 847–303–5664, fax number 847–303–5774, Web site: *http://www.aamanet.org.*

ANSI—American National Standards Institute, 25 West 43rd Street, 4th floor, New York, NY 10018, telephone number 212–642–4900, fax number 212–398–0023, Web site: *http://www.ansi.org.*

APA—The Engineered Wood Association, 7011 South 19th Street Tacoma, WA 98411, telephone number 253–565–6600, fax number 253–565–7265, Web site: *http://www.apawood.org.*

ASSE—American Society of Sanitary Engineering, 901 Canterbury, Suite A, Westlake, OH 44145, telephone number 440–835–3040, fax number 440–835–3488, Web site: *http://www.asse-plumbing.org.*

ASTM—American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428, telephone number 610–832–9500, fax number 610–832–9555, Web site: *http://www.astm.org.*

CSA (IAS)—CSA International (formerly International Approval Services), 850 East Pleasant Valley Road, Independence, OH 44131, telephone number 216–524–4990, fax number 216–642–3463, Web site: *http://www.csa-international.org.*

NFPA—National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, telephone number 617–770–3000, fax number 617–770–0700, Web site: *http://www.nfpa.org.*

PS—U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Office of Engineering Standards, Room A–166, Technical Building, Washington, DC 20234 and Voluntary Product Division, 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899–2100, telephone number 301–975–4000, fax number 301–975–4715, Web site: *http://www.nist.gov.*

RADCO—Resources, Applications, Designs, & Controls, Inc., 3220 East 59th Street Long Beach, CA 90805, telephone number 562–272–7231, fax number 562–529–7513, Web site: *http://www.astm.org.*

UL—Underwriters Laboratories, 333 Pfingsten Road, Northbrook, IL 60062, telephone number 847–272–8800, fax number 847–509–6257, Web site: *http://www.ul.com.*

WDMA—Window & Door Manufacturers Association (WDMA), (previously known as the National Wood Window and Door Association, (NWWDA)), 2025 M Street NW., Suite 800, Washington, DC 20036–3309, telephone number, 202–367–1157, Web site: *https://www.wdma.com.*

List of Subjects in 24 CFR Part 3280

Housing standards, Incorporation by reference, Manufactured homes.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Manufactured Housing Construction and Safety Standards is 14.171.

Accordingly, for the reasons stated in the preamble, HUD is amending 24 CFR part 3280 as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

■ 1. The authority citation for part 3280 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5403, and 5424.

■ 2. Revise § 3280.4 to read as follows:

§ 3280.4 Incorporation by reference.

(a) The specifications, standards, and codes of the following organizations are incorporated by reference in 24 CFR part 3280 (this Standard) pursuant to 5 U.S.C. 552(a) and 1 CFR part 51 as though set forth in full. The incorporation by reference of these standards has been approved by the Director of the Federal Register. Incorporated standards have the same force and effect as this Standard (24 CFR part 3280), except that whenever reference standards and this Standard are inconsistent, the requirements of this Standard prevail to the extent of the inconsistency. The Department will enforce the listed editions of material incorporated by this section. Where two or more incorporated standards are equivalent in application, the manufacturer may use either standard. If a later edition is to be enforced, the Department will publish a notice of change in the **Federal Register**. These incorporated standards are available for purchase from the organization that developed the standard at the corresponding addresses noted below. Incorporated standards are available for inspection at the Office of Manufactured Housing Program, Manufactured Housing and Construction Standards Division, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Room B–133, Washington, DC 20410. Copies of incorporated standards that are not available from their producer organizations may be obtained from the Office of Manufactured Housing Programs. These standards are also available for inspection at the National Archives and Records Administration (NARA). For more information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register.*

(b) Air Conditioning & Refrigeration Institute (ARI), 4100 North Fairfax Drive, Suite 200, Arlington, VA 22203, telephone number 703–524–8800, fax number 703–528–3816, Web site: *http://www.lightindustries.com/ARI/.*

(1) ANSI/ARI Standard 210/240–89, Unitary Air-Conditioning and Air-Source Heat Pump Equipment, IBR approved for §§ 3280.511(b), 3280.703, and 3280.714(a),

(2) [Reserved].

(c) Aluminum Association (AA), 1525 Wilson Blvd., Suite 600, Arlington, VA 22209; telephone number 703–358–2960, fax number 703–358–3921; Web site: *http://www.aluminum.org.*

(1) Aluminum Design Manual, Specifications and Guidelines for Aluminum Structures, Part 1–A, Sixth Edition, October 1994, IBR approved for § 3280.304(b).

(2) Aluminum Design Manual, Specifications and Guidelines for Aluminum Structures, Part 1–B, First Edition, October 1994, IBR approved for § 3280.304(b).

(d) American Architectural Manufacturers Association (AAMA), 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173, telephone number 847–303–5664, fax number 847–303–5774, Web site: *http://www.aamanet.org.*

(1) AAMA 1503.1–88, Voluntary Test Method for Thermal Transmittance and Condensation Resistance of Windows, Doors, and Glazed Wall Sections, IBR approved for § 3280.508(e).

(2) AAMA 1600/I.S.7–00, Voluntary Specification for Skylights, 2003 IBR approved for § 3280.305(c).

(3) AAMA 1701.2–95, Voluntary Standard Primary Window and Sliding Glass Door for Utilization in Manufactured Housing, IBR approved for §§ 3280.403(e) and 3280.404(b).

(4) AAMA 1702.2–95, Voluntary Standard Swinging Exterior Passage Door for Utilization in Manufactured Housing, IBR approved for § 3280.405(b) and (e).

(5) AAMA Standard 1704–1985, Voluntary Standard Egress Window Systems for Utilization in Manufactured Housing, IBR approved for § 3280.404(b).

(6) AAMA/WDMA/CSA/101/I.S.2/A440–08 North American Fenestration Standard/Specification for Windows, Doors and Skylights, January 2008, IBR approved for § 3280.403(b) and (e).

(7) ANSI/AAMA/NWWDA 101/I.S.2–97,Voluntary Specifications for Aluminum, Vinyl (PVC) and Wood Windows and Glass Doors, IBR approved for § 3280.304(b).

(e) American Forest and Paper Association (AFPA), 1111 Nineteenth Street, Suite 800, Washington, DC 20036 (previously named National Forest Products Association (NFPA), telephone number 1–800–878–8878, Web site: *http://www.afandpa.org.*

(1) AFPA, Design Values for Joists and Rafters 1992, IBR approved for § 3280.304(b).

(2) AFPA PS–20–70, Span Tables for Joists and Rafters, 1993, IBR approved for § 3280.304(b).

(3) ANSI/AFPA NDS–2001, National Design Specifications for Wood Construction, 2001 Edition, with Supplement, Design Values for Wood Construction, November 30, 2001, IBR approved for § 3280.304(b).

(4) AFPA, Wood Structural Design Data, 1986 Edition with 1992 Revisions, IBR approved for § 3280.304(b).

(f) American Gas Association (AGA), 400 North Capitol Street NW., Washington, DC 20001, telephone number 202–824–7000, Web site: *http://www.aga.org/Pages/default.aspx.*

(1) AGA No. 3–87, Requirements for Gas Connectors for Connection of Fixed Appliances for Outdoor Installation, Park Trailers, and Manufactured (Mobile) Homes to the Gas Supply, IBR approved for § 3280.703.

(2) [Reserved].

(g) American Hardboard Association (AHA), 1210 West NW Highway, Palatine, IL 60067, Web site: *http://hardboard.org.*

(1) ANSI/AHA A135.4–1995, Basic Hardboard, IBR approved for § 3280.304(b).

(2) ANSI/AHA A135.5–1995, Prefinished Hardboard Paneling, IBR approved for § 3280.304(b).

(3) ANSI/AHA A135.6–1998, Hardboard Siding, IBR approved for § 3280.304(b).

(h) American Institute of Steel Construction (AISC), One East Wacker Drive, Chicago, IL 60601, telephone number 312–670–2400, fax number 312–670–5403, Web site: *http://www.aisc.org/.*

(1) AISC–S335, 1989. Specification for Structural Steel Buildings—Allowable Stress Design and Plastic Design (except for the following parts of this standard

which are not incorporated by reference: 1.3.3, 1.3.4, 1.3.5, 1.3.6, 1.4.6, 1.5.1.5, 1.5.5, 1.6, 1.7, 1.8, 1.9, 1.10.4 through 1.10.7, 1.10.9, 1.11, 1.13, 1.14.5, 1.17.7 through 1.17.9, 1.19.1, 1.19.3, 1.20, 1.21, 1.23.7, 1.24, 1.25.1 through 1.25.5, 1.26.4, 2.3, 2.4, 2.8 through 2.10), June 1, 1989, IBR approved for §§ 3280.304(b) and 3280.305(j).

(2) [Reserved].

(i) American Iron and Steel Institute (AISI), 25 Massachusetts Ave., NW., Suite 800, Washington, DC 20001, telephone number 202–452–7100, Web site: *http://www.steel.org.*

(1) AISI, Specification for the Design of Cold-Formed Steel Structural Members, 1996, IBR approved for §§ 3280.304(b) and 3280.305(j).

(2) [Reserved].

(j) American National Standards Institute (ANSI), 25 West 43rd Street, 4th floor, New York, NY 10018, telephone number 212–642–4900, fax number 212–398–0023, Web site: *http://www.ansi.org.*

(1) ANSI A112.14.1–1975, Backflow Valves, IBR approved for § 3280.604(b).

(2) ANSI A112.19.5–1979, Trim for Water Closet, Bowls, Tanks, and Urinals, IBR approved for § 3280.604(b).

(3) ANSI/AITC A190.1–1992, For wood products—Structural Glued Laminated Timber, IBR approved for § 3280.304(b).

(4) ANSI A208.1–1999, Particleboard, IBR approved for § 3280.304(b).

(5) ANSI A208.2–2002, Medium Density Fiberboard (MDF) For Interior Applications, approved May 13, 2002, IBR approved for § 3280.304(b).

(6) ANSI B16.18–1984, Cast Copper Alloy Solder-Joint Pressure Fittings, IBR approved for § 3280.604(b).

(7) ANSI C72.1–1972, section 4.3.1, Household Automatic Electric Storage Type Water Heaters, IBR approved for § 3280.707(d).

(8) ANSI/IAS LC 1–1997, Fuel Gas Piping Systems Using Corrugated Stainless Steel Tubing (CSST), approved October 28, 1996, IBR approved for § 3280.705(b).

(9) ANSI Z21.1–2000, Household Cooking Gas Appliances, IBR approved for § 3280.703.

(10) ANSI Z21.5.1–1999, Gas Clothes Dryers Volume 1, Type 1 Clothes Dryers, with Addendum Z21.5.1a–1999, IBR approved for § 3280.703.

(11) ANSI Z21.10.1–1998, Gas Water Heaters—Volume 1, Storage Water Heaters with Input Ratings of 75,000 BTU per hour or Less, with Addendum Z21.10.1a–2000, IBR approved for §§ 3280.703 and 3280.707(d).

(12) ANSI Z21.15–1997, Manually Operated Gas Valves for Appliances, Appliance Connector Valves and Hose End Valves, IBR approved for §§ 3280.703 and 3280.705(c).

(13) ANSI Z21.19–1990, with Addendum ANSI Z21.19a–1992 and Z21.19b–1995, Refrigerators Using Gas Fuel, IBR approved for § 3280.703.

(14) ANSI Z21.20 with Addendum Z21.20a–2000, Automatic Gas Ignition Systems and Components, IBR approved for § 3280.703.

(15) ANSI Z21.21–2000, Automatic Valves for Gas Appliances, IBR approved for § 3280.703.

(16) ANSI Z21.22–1999, Relief Valves for Hot Water Supply Systems, IBR approved for §§ 3280.604(b) and 3280.703.

(17) ANSI Z21.23–1993, Gas Appliance Thermostats, approved August 10, 1993, IBR approved for § 3280.703.

(18) ANSI Z21.24–1997/CGA 6.10–M97, Connectors for Gas Appliances, IBR approved for § 3280.703.

(19) ANSI Z21.40.1–1996/CGA 2.91–M96, Gas-Fired, Heat Activated Air Conditioning and Heat Pump Appliances, IBR approved for §§ 3280.703 and 3280.714(a).

(20) ANSI Z21.47–1990 with Addendum Z21.47a–1990 and Z21.47b–1992, Gas-Fired Central Furnaces (Except Direct Vent System Central Furnaces), IBR approved for § 3280.703.

(21) ANSI Z34.1–1993, Third-Party Certification Programs for Products, Processes, and Services, IBR approved for §§ 3280.403(e) and 3280.405(e).

(22) ANSI Z97.1–2004, Standard for Safety Glazing Materials used in Buildings—Safety Performance Specifications and Methods of Test, copyright 2004, IBR approved for §§ 3280.113(c), 3280.304(b), 3280.403(d)(1), 3280.604(b), and 3280.607(b).

(23) ANSI Z124.1–1987, Plastic Bathtub Units with Addendum Z124.1a–1990 and Z124.1b–1991, IBR approved for § 3280.604(b).

(24) ANSI Z124.2–1987, Plastic Shower Receptors and Shower Stalls with Addendum Z124.2a–1990, IBR approved for § 3280.604(b).

(25) ANSI Z124.3–1986, Plastic Lavatories with Addendum Z124.3a–1990, IBR approved for § 3280.604(b).

(26) ANSI Z124.4–1986, Plastic Water Closets, Bowls, and Tanks with Addenda Z124.4a–1990, IBR approved for § 3280.604(b).

(27) ANSI Z124.5–1997, Plastic Toilet (Water Closets) Seats, IBR approved for § 3280.604(b).

(28) ANSI Z124.7–1997, Prefabricated Plastic Spa Shells, IBR approved for § 3280.604(b).

(29) ANSI Z–124.9–1994, Plastic Urinal Fixtures, IBR approved for § 3280.604(b).

(k) The Engineered Wood Association (APA) (formerly the American Plywood Association), 7011 South 19th Street, Tacoma, WA 98411, telephone number 253–565–6600, fax number 253–565–7265, Web site: *http://www.apawood.org.*

(1) APA D410A–2004, Panel Design Specification, IBR approved for § 3280.304(b).

(2) APA E30P–1996, APA Design/Construction Guide, Residential and Commercial Structures, IBR approved for § 3280.304(b).

(3) APA E30R, Engineered Wood Construction Guide, revised January 2001, IBR approved for § 3280.304(b).

(4) APA H815E–1995 (PDS Supplement #5), Design and Fabrication of All-Plywood Beams, IBR approved for § 3280.304(b).

(5) APA S 811M–1990 (PDS Supplement 1), Design and Fabrication of Plywood Curved Panels, IBR approved for § 3280.304(b).

(6) APA S 812R, Design and Fabrication of Glued Plywood-Lumber Beams, revised November 1998, Supplement #2, July 1992 IBR approved for § 3280.304.

(7) APA U 813L, Design and Fabrication of Plywood Stressed-Skin Panels, revised April 1996, Supplement # 3, August 1992, IBR approved for § 3280.304(b).

(8) APA U 814H, Design and Fabrication of Plywood, Sandwiched Panels, revised September 1993, Supplement #4, March 1990, IBR approved for § 3280.304(b).

(l) American Society of Civil Engineers (ASCE), 1801 Alexander Bell Drive, Reston, VA 20191, telephone number 800–548–2723, Web site: *http://www.asce.org.*

(1) ANSI/ASCE 7–88, Minimum Design Loads for Buildings and Other Structures, IBR approved for §§ 3280.5(f), 3280.304(b), and 3280.305(c).

(2) SEI/ASCE 8–02, Specification for the Design of Cold-Formed Stainless Steel Structural Members, 2002, IBR approved for §§ 3280.304(b) and 3280.305(j).

(3) ASCE 19–96, Structural Applications of Steel Cables for Buildings, IBR approved for § 3280.304(b).

(m) American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), 1791 Tullie Circle NE., Atlanta, GA 30329, telephone number 404–636–8400, fax number 404–321–5478, Web site: *https://www.ashrae.org/home/.*

(1) 1997 ASHRAE Handbook of Fundamentals, Inch-Pound Edition (1997), chapters 22 through 27, (except

for the following parts of this standard that are not incorporated by reference: 23.1 Steel Frame Construction; 23.2 Masonry Construction; 23.3 Foundations and Floor Systems; 23.15 Pipes; 23.17 Tanks, Vessels, and Equipment; 23.18 Refrigerated Rooms and Buildings; 24.18 Mechanical and Industrial Systems; 25.19 Commercial Building Envelope Leakage; 27.9 Calculation of Heat Loss from Crawl Spaces). IBR approved for §§ 3280.508(a), 3280.508(e), and 3280.511(a).

(2) [Reserved].

(n) ASME (formally the American Society of Mechanical Engineers), Two Park Avenue, New York, NY 10016–5990, telephone number 800–843–2763, Web site: *http://www.asme.org/*.

(1) ASME A112.1.2–1991, Air Gaps in Plumbing Systems, IBR approved for § 3280.604(b).

(2) ANSI/ASME A112.4.1–1993, Water Heater Relief Valve Drain Tubes, IBR approved for § 3280.604(b).

(3) ANSI/ASME A112.4.3–1999, Plastic Fittings for Connecting Water Closets to the Sanitary Drainage System, IBR approved for § 3280.604(b).

(4) ASME/ANSI A112.18.1M–1989, Plumbing Fixture Fittings, IBR approved for § 3280.604(b).

(5) ASME A112.18.3M–1996, Performance Requirements for Backflow Protection Devices and Systems in Plumbing Fixture Fittings, IBR approved for § 3280.604(b).

(6) ASME A112.18.6–1999, Flexible Water Connectors, IBR approved for § 3280.604(b).

(7) ASME A112.18.7–1999, Deck Mounted Bath/Shower Transfer Valves with Integral Backflow Protection, IBR approved for § 3280.604(b).

(8) ANSI/ASME A112.19.1M–1987, Enameled Cast Iron Plumbing Fixtures, IBR approved for § 3280.604(b).

(9) ANSI/ASME A112.19.2(M)–1990, Vitreous China Plumbing Fixtures, IBR approved for § 3280.604(b).

(10) ANSI/ASME A112.19.3M–1987, Stainless Steel Plumbing Fixtures (Designed for Residential Use), IBR approved for § 3280.604(b).

(11) ANSI/ASME A112.19.4(M)–1984, Porcelain Enameled Formed Steel Plumbing Fixtures, IBR approved for § 3280.604(b).

(12) ASME A112.19.6–1995, Hydraulic Performance Requirements for Water Closets and Urinals, IBR approved for § 3280.604(b).

(13) ASME/ANSI A112.19.7M–1987, Whirlpool Bathtub Appliances, IBR approved for § 3280.604(b).

(14) ASME/ANSI A112.19.8M–1989, Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Whirlpool Bathtub Appliances, IBR approved for § 3280.604(b).

(15) ASME A112.19.9M–1991, Non-Vitreous Ceramic Plumbing Fixtures, IBR approved for § 3280.604(b).

(16) ASME A112.19.10–1994, Dual Flush Devices for Water Closets, IBR approved for § 3280.604(b).

(17) ANSI/ASME A112.21.3M–1985, Hydrants for Utility and Maintenance Use, IBR approved for § 3280.604(b).

(18) ANSI/ASME B1.20.1–1983, Pipe Threads, General Purpose (Inch), IBR approved for §§ 3280.604(b), 3280.703, 3280.705(e), and 3280.706(d).

(19) ANSI/ASME B16.3–1992, Malleable Iron Threaded Fittings, IBR approved for § 3280.604(b).

(20) ANSI/ASME B16.4–1992, Gray Iron Threaded Fittings, IBR approved for § 3280.604(b).

(21) ANSI/ASME B16.15–1985, Cast Bronze Threaded Fittings, Classes 125 and 250, IBR approved for § 3280.604(b).

(22) ASME/ANSI B16.22–1989, Wrought-Copper and Copper Alloy Solder-Joint Pressure Fitting, IBR approved for § 3280.604(b).

(23) ASME B16.23–1992, Cast Copper Alloy Solder-Joint Drainage Fittings-DWV, IBR approved for § 3280.604(b).

(24) ASME/ANSI B16.26–1988, Cast Copper Alloy Fittings for Flared Copper Tubes, IBR approved for § 3280.604(b).

(25) ASME/ANSI B16.29–1986, Wrought Copper and Wrought Copper Alloy Solder-Joint Drainage Fittings-DWV, IBR approved for § 3280.604(b).

(26) ANSI/ASME B36.10–1979, Welding and Seamless Wrought Steel Pipe, IBR approved for §§ 3280.604(b), 3280.703, 3280.705(b), and 3280.706(b).

(o) American Society of Sanitary Engineering (ASSE), 901 Canterbury, Suite A, Westlake, OH 44145, phone number 440–835–3040, fax number 440–835–3488, Web site: *http://www.asse-plumbing.org*.

(1) ASSE 1001 (ANSI Approved 1990), Performance Requirements for Pipe Applied Atmospheric Type Vacuum Breakers, IBR approved for § 3280.604(b).

(2) ASSE 1002 Revision 5–1986 (ANSI/ASSE–1979), Performance Requirements for Water Closet Flush Tank Fill Valves (Ballcocks), IBR approved for § 3280.604(b).

(3) ASSE 1006 (ASSE/ANSI–1986), Plumbing Requirements for Residential Use (Household) Dishwashers, IBR approved for § 3280.604(b).

(4) ASSE 1007–1986, Performance Requirements for Home Laundry Equipment, IBR approved for § 3280.604(b).

(5) ASSE 1008–1986, Performance Requirements for Household Food Waste Disposer Units, IBR approved for § 3280.604(b).

(6) ASSE 1011–1981 (ANSI–1982), Performance Requirements for Hose Connection Vacuum Breakers, IBR approved for § 3280.604(b).

(7) ASSE 1014–1989 (ANSI–1990), Performance Requirements for Hand-held Showers, IBR approved for § 3280.604(b).

(8) ASSE 1016–2005, Performance Requirements for Automatic Compensating Values for Individual Shower and Tub/Shower Combinations, approved January 2005, IBR approved for §§ 3280.604(b) and 3280.607(b).

(9) ASSE 1017–1986, Performance Requirements for Temperature Activated Mixing Valves for Primary Domestic Use, IBR approved for § 3280.604(b).

(10) ANSI/ASSE 1019–1978, Performance Requirements for Wall Hydrants, Frost Proof Automatic Draining, Anti-Backflow Types, IBR approved for § 3280.604(b).

(11) ASSE 1023 (ANSI/ASSE–1979), Performance Requirements for Hot Water Dispensers, Household Storage Type Electrical, IBR approved for § 3280.604(b).

(12) ASSE 1025 (ANSI/ASSE–1978), Performance Requirements for Diverters for Plumbing Faucets with Hose Spray, Anti-Siphon Type, Residential Applications, IBR approved for § 3280.604(b).

(13) ASSE 1037–1990 (ANSI–1990), Performance Requirements for Pressurized Flushing Devices (Flushometers) for Plumbing Fixtures, IBR approved for § 3280.604(b).

(14) ASSE 1051 Revised 1996 (ANSI 1998), Performance Requirements for Air Admittance Valves for Plumbing Drainage Systems—Fixture and Branch Devices, IBR approved for § 3280.604(b).

(p) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428, (610) 832–9500, fax number 610–832–9555, Web site: *http://www.astm.org*.

(1) ASTM A53–93. Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless, IBR approved for §§ 3280.604(b) and 3280.703.

(2) ASTM A74–92, Standard Specification for Cast Iron Soil Pipe and Fittings, IBR approved for § 3280.604(b).

(3) ASTM A539–99, Standard Specification for Electric-Resistance-Welded Coiled Steel Tubing for Gas and Fuel Oil Lines, IBR approved for §§ 3280.703, 3280.705(b), and § 3280.706(b).

(4) ASTM B42–93, Standard Specification for Seamless Copper Pipe,

Standard Sizes, IBR approved for §§ 3280.604 and 3280.703.

(5) ASTM B43–91, Standard Specification for Seamless Red Brass Pipe, Standard Sizes, IBR approved for §§ 3280.604(b) and 3280.705(b).

(6) ASTM B88–93, Standard Specification for Seamless Copper Water Tube, IBR approved for §§ 3280.604, 3280.703, 3280.705(b), and 3280.706(b).

(7) ASTM B251–93, Standard Specification for General Requirements for Wrought Seamless Copper and Copper-Alloy Tube, IBR approved for §§ 3280.604 and 3280.703.

(8) ASTM B280–95a, Standard Specification for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service, IBR approved for §§ 3280.703, 3280.705(b), and 3280.706(b).

(9) ASTM B306–92, Standard Specification for Copper Drainage Tube (DWV), IBR approved for § 3280.604(b).

(10) ASTM C 36/C 36M–99, Standard Specification for Gypsum Wallboard, 1999, IBR approved for § 3280.304.

(11) ASTM C564–97, Standard Specification for Rubber Gaskets for Case Iron Soil Pipe and Fittings, approved December 10, 1997, IBR approved for §§ 3280.604(b) and 3280.611(d).

(12) ASTM C920–02, Standard Specification for Elastomeric Joint Sealants, approved January 10, 2002, IBR approved for § 3280.611(d).

(13) ASTM D781–68 (Reapproved 1973), Standard Test Methods for Puncture and Stiffness of Paperboard, and Corrugated and Solid Fiberboard, IBR approved for §§ 3280.304(b), and 3280.305(g).

(14) ASTM D2235–88, Standard Specification for Solvent Cement for Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe and Fittings, IBR approved for § 3280.604(b).

(15) ASTM D2564–91a, Standard Specification for Solvent Cements for Poly (Vinyl Chloride) (PVC) Plastic Piping Systems, IBR approved for § 3280.604(b).

(16) ASTM D2661–91, Standard Specification for Acrylonitrile-Butadiene-Styrene (ABS) Schedule 40 Plastic Drain, Waste, and Vent Pipe and Fittings, IBR approved for § 3280.604(b).

(17) ASTM D2665–91b, Standard Specification for Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste, and Vent Pipe and Fittings, IBR approved for § 3280.604(b).

(18) ASTM D2846–92, Standard Specification for Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Hot- and Cold-Water Distribution Systems, IBR approved for § 3280.604(b).

(19) ASTM D3309–92a, Standard Specification for Polybutylene (PB) Plastic Hot- and Cold-Water Distribution Systems, IBR approved for § 3280.604(b).

(20) ASTM D3311–92, Standard Specification for Drain, Waste, and Vent (DWV) Plastic Fittings Patterns, IBR approved for § 3280.604(b).

(21) ASTM D3953–97, Standard Specification for Strapping, Flat Steel, and Seals, approved April 10, 1997, IBR approved for §§ 3280.306(b) and 3280.306(g).

(22) ASTM D4442–92 (Reapproved 1997), Standard Test Methods for Direct Moisture Content Measurement of Wood and Wood-Base Materials, IBR approved for § 3280.304(b).

(23) ASTM D4444–92, Standard Test Methods for Use and Calibration of Hand-Held Moisture Meters, IBR approved for § 3280.304(b).

(24) ASTM D4635–01, Standard Specification for Polyethylene Films Made from Low-Density Polyethylene for General Use and Packaging Applications, approved June 10, 2001, IBR approved for § 3280.611(d).

(25) ASTM E84–01, Standard Test Method for Surface Burning Characteristics of Building Materials, 2001, IBR approved for § 3280.203(a).

(26) ASTM E 96–95 Standard Test Methods for Water Vapor Transmission of Materials, IBR approved for § 3280.504(a).

(27) ASTM E 162–94, Standard Test Method for Surface Flammability of Materials Using a Radiant Heat Energy Source, IBR approved for § 3280.203(a).

(28) ASTM E 773–97, Standard Test Methods for Accelerated Weathering of Sealed Insulating Glass Units, IBR approved for § 3280.403(d).

(29) ASTM E 774–97, Standard Specification for the Classification of the Durability of Sealed Insulating Glass Units, IBR approved for § 3280.403(d).

(30) ASTM E 1333–96, Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber, approved March 10, 1996, IBR approved for § 3280.406(b).

(31) ASTM F628–91, Standard Specification for Acrylonitrile-Butadiene-Styrene (ABS) Schedule 40, Plastic Drain, Waste, and Vent Pipe with a Cellular Core, IBR approved for § 3280.604(b).

(32) ASTM F876–10, Standard Specification for Crosslinked Polyethylene (PEX) Tubing, approved February 10, 2010, IBR approved for § 3280.604(b).

(33) ASTM F877–07, Standard Specification for Crosslinked Polyethylene (PEX) Plastic Hot- and Cold-Water Distribution Systems, approved February 1, 2007, IBR approved for § 3280.604(b).

(q) Cast Iron Soil Pipe Institute (CISPI), 1064 Delaware Avenue SE, Atlanta, GA 30316, telephone number 404–622–0073, fax number 404–973–2845, Web site: *http://www.cispi.org/.*

(1) CISPI–301–90, Standard Specification for Hubless Cast Iron Soil Pipe and Fittings for Sanitary and Storm Drain, Waste, and Vent Piping Applications, IBR approved for § 3280.604(b).

(2) CISPI–HSN–85, Specification for Neoprene Rubber Gaskets for HUB and Spigot Cast Iron Soil Pipe and Fittings, IBR approved for §§ 3280.604, 3280.611(d).

(r) FS—Federal Specifications, General Services Administration, Specifications Branch, Room 6039, GSA Building, 7th and D Streets, SW., Washington, DC 20407.

(1) FS WW–P–541E/GEN–1980, Plumbing Fixtures (General Specifications), IBR approved for § 3280.604(b).

(2) FS ZZ–R–765B–1970, Silicone Rubber, (with 1971 Amendment), IBR approved for § 3280.611(d).

(s) HPVA (previously HPMA)—Hardwood Plywood and Veneer Association (HPVA) (previously named Hardwood Plywood Manufacturers Association (HPMA), 1825 Michael Faraday Drive, Reston, VA 22090, telephone number 703–435–2900, fax number 703–435–2537, Web site: *http://www.hpva.org/.*

(1) ANSI/HPVA HP–1–1994 (Approved 1995), American National Standard for Hardwood and Decorative Plywood, IBR approved for § 3280.304(b).

(2) HP–SG–96, Structural Design Guide for Hardwood Plywood Wall Panels, revised 1996, IBR approved for § 3280.304(b).

(t) HUD User, 11491 Sunset Hills Road, Reston, VA 20190–5254.

(1) HUD User No. 0005945, Overall U-values and Heating/Cooling Loads—Manufactured Homes, February 1992. IBR approved for § 3280.508(b).

(2) [Reserved].

(u) IIT Research Institute (IITRI), 10 West 35th Street, Chicago, IL 60616, telephone number 312–567–4000, Web site: *http://www.iitri.org/.*

(1) IITRI Fire and Safety Research Project J–6461 ''Development of Mobile Home Fire Test Methods to Judge the Fire-Safe Performance of Foam Plastic Sheathing and Cavity Insulation'', 1979, IBR approved for § 3280.207(a).

(2) [Reserved].

(v) International Association of Plumbing and Mechanical Officials

(IAPMO), 4755 East Philadelphia Street, Ontario, CA 91716, telephone number 909–472–4100, fax number 909–472–4150, Web site: *http://www.iapmo.org*.

(1) IAPMO PS 2–89, Material and Property Standard for Cast Brass and Tubing P-Traps, IBR approved for § 3280.604(b).

(2) IAPMO PS 4–90, Material and Property Standard for Drains for Prefabricated and Precast Showers, IBR approved for § 3280.604(b).

(3) IAPMO PS 5–84, Material and Property Standard for Special Cast Iron Fittings, IBR approved for § 3280.604(b).

(4) IAPMO PS 9–84, Material and Property Standard for Diversion Tees and Twin Waste Elbow, IBR approved for § 3280.604(b).

(5) IAPMO PS 14–89, Material and Property Standard for Flexible Metallic Water Connectors, IBR approved for § 3280.604(b).

(6) IAPMO PS 23–89, Material and Property Standard for Dishwasher Drain Airgaps, IBR approved for § 3280.604(b).

(7) IAPMO PS 31–91, Material and Property Standards for Backflow Prevention Assemblies, IBR approved for § 3280.604(b).

(8) IAPMO TSC 9–97, Standard for Gas Supply Connectors for Manufactured Homes, IBR approved for § 3280.703.

(9) IAPMO TSC 22–85, Standard for Porcelain Enameled Formed Steel Plumbing Fixtures, IBR approved for § 3280.604(b).

(w) Military Specifications and Standards, Naval Publications and Forms Center (MIL), 5801 Tabor Avenue, Philadelphia, PA 19120.

(1) MIL–L–10547E–1975, Liners, Case, and Sheet, Overwrap; Water-Vapor Proof or Waterproof, Flexible, IBR approved for § 3280.611(d).

(2) [Reserved].

(x) National Electrical Manufacturers Association (NEMA), 1300 North 17th Street, Suite 1752, Arlington, VA 22209, telephone number 703–841–3200, fax number 703–841–5900, Web site: *http://www.nema.org/Pages/default.aspx*.

(1) ANSI/NEMA WD–6–1997 Wiring Devices–Dimensional Specifications, IBR approved for § 3280.803(f).

(2) [Reserved].

(y) International Code Council Evaluation Service (NER), (previously known as National Evaluation Service), 5360 Workman Mill Road, Whittier, CA 90601–0543, telephone number 1–800–423–6587, ext. 66546, fax number 562–695–4694, Web site: *http://www.icc-es.org*.

(1) NER–272, National Evaluation Report, Power Driven Staples, Nails, and Allied Fasteners for Use in All Types of Building Construction, Reissued September 1, 1997, IBR approved for § 3280.304(b).

(2) [Reserved].

(z) National Fenestration Rating Council (NFRC), 6305 Ivy Lane, Suite 140, Greenbelt, MD 20770, telephone number 301–589–1776, fax number 301–589–3884, Web site: *http://www.nfrc.org*.

(1) NFRC 100, Procedure for Determining Fenestration Product U-factors, 1997 Edition, IBR approved for § 3280.508(e).

(2) [Reserved].

(aa) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02269, phone number 617–770–3000, fax number 617–770–0700, Web site: *http://www.nfpa.org*.

(1) NFPA 31, Standard for the Installation of Oil Burning Equipment, 2001, IBR approved for §§ 3280.703 and 3280.707(f).

(2) NFPA 54–2002, National Fuel Gas Code, IBR approved for § 3280.703.

(3) NFPA 58, Liquefied Petroleum Gas Code, 2001 Edition, IBR approved for §§ 3280.703 and 3280.704(b).

(4) NFPA No. 70–2005, National Electrical Code, IBR approved as follows:

(i) Article 110.22, IBR approved for §§ 3280.803(k) and 3280.804(k).

(ii) Article 210.12(A) and (B), IBR approved for § 3280.801(b).

(iii)Article 220.61, IBR approved for § 3280.811(b).

(iv) Article 230, IBR approved for §§ 3280.803(k) and 3280.804(k).

(v) Article 250.24, IBR approved for §§ 3280.803(k) and 3280.804(k).

(vi) Article 250.26, IBR approved for §§ 3280.803(k) and 3280.804(k).

(vii) Article 250.28, IBR approved for §§ 3280.803(k) and 3280.804(k).

(viii) Article 312.2(A), IBR approved for §§ 3280.803(k) and 3280.804(k).

(x) Table 314.16(A), IBR approved for §§ 3280.808(m) and 3280.808(q).

(ix) Article 314.23(B), IBR approved for §§ 3280.808(m) and 3280.808(q).

(xi)Article 406.3, IBR approved for § 3280.807(d).

(xii)Article 410.4(D), IBR approved for § 3280.805(a).

(xiii)Article 440, IBR approved for § 3280.805(a).

(xiv) Article 440.65, IBR approved for § 3280.801(b).

(xv) Part II of Article 550, IBR approved for §§ 3280.801(a) and 3280.801(b).

(xvi) Article 550.25(a), IBR approved for § 3280.801(b).

(xvii) Article 680.70, IBR approved for §§ 3280.607(c) and 3280.801(a).

(xviii)Article 680.71, IBR approved for §§ 3280.607(c) and 3280.801(a).

(xix)Articles 680.72, IBR approved for §§ 3280.607(c) and 3280.801(a).

(5) NFPA 90B, Warm Air Heating and Air Conditioning Systems, 1996 Edition, IBR approved for § 3280.703.

(6) NFPA 220, Standard on Types of Building Construction, Chapter 2: definitions of ''limited combustible'' and ''noncombustible material'', 1995 Edition, IBR approved for § 3280.202.

(7) NFPA 253, Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source, 2000, IBR approved for § 3280.207(c).

(8) NFPA 255, Standard Method of Test of Surface Burning Characteristics of Building Materials, 1996, IBR approved for §§ 3280.203(a) and 3280.207(a).

(bb) U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Office of Engineering Standards, Room A–166, Technical Building, Washington, DC 20234 and Voluntary Product Division, 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899–2100, telephone number 301- 975–4000, fax number 301–975–4715, Web site: *http://www.nist.gov*.

(1) PS 1–95, Construction and Industrial Plywood (With Typical APA Trademarks), IBR approved for § 3280.304(b).

(2) Voluntary Product Standard PS 2–04, Performance Standard for Wood-Based Structural-Use Panels, December 2004, IBR approval for § 3280.304(b).

(cc) National Sanitation Foundation (NSF), 789 North Dixboro Road, Ann Arbor, MI 48105, telephone number 734–769–8010, fax number 734–769–0109, Web site: *http://www.nsf.org*.

(1) ANSI/NSF 14–1990, Plastic Piping Components and Related Materials, IBR approved for § 3280.604(b).

(2) ANSI/NSF 24–1988, Plumbing System Components for Manufactured Homes and Recreational Vehicles, IBR approved for § 3280.604(b).

(3) ANSI/NSF 61–2001, Drinking Water System Components–Health Effects, IBR approved for § 3280.604(b).

(dd) Resources, Applications, Designs, & Controls (RADCO), 3220 East 59th Street, Long Beach, CA 90805, telephone number 562–272–7231, fax number 562–529–7513, Web site: *http://www.radcoinc.com*.

(1) RADCO DS–010–91, Decorative Gas Appliances for Installation in Solid Fuel Burning Fireplaces, May 1991, IBR approved for § 3280.703.

(2) [Reserved].

(ee) Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096, telephone number 724–776–0790, Web site: *http://www.sae.org/*.

(1) SAE–J533b–1992, Flares for Tubing, IBR approved for §§ 3280.703 and 3280.705(f).

(2) [Reserved].

(ff) Steel Joist Institute (SJI), 234 West Cheves Street, Florence, SC 29501, telephone number 843–407–4091, Web site: *http://steeljoist.org*.

(1) Standard Specifications Load Tables and Weight Tables for Steel Joists and Joist Girders, SJI 1994, Fortieth Edition, IBR approved for § 3280.304(b).

(2) [Reserved].

(gg) Truss Plate Institute (TPI), 218 North Lee Street, Suite 312, Alexandria, VA 22314, telephone number 703–683–1010, fax number 866–501–4012, Web site: *http://www.tpinst.org/index.html*.

(1) TPI–85, Design Specifications for Metal Plate and Wood Connected Trusses, IBR approved for § 3280.304(b).

(2) [Reserved].

(hh) Underwriters' Laboratories, Inc. (UL), 333 Pfingsten Road, Northbrook, IL 60062, telephone number 847–272–8800, fax number 847–509–6257, Web site: *http://www.ul.com*.

(1) UL 94–1996, with 2001 revisions, Test for Flammability of Plastic Materials for Parts in Devices and Appliances, Fifth Edition, IBR approved for § 3280.715(e).

(2) UL 103–1995, with 1999 revisions, Factory-Built Chimneys for Residential Type and Building Heating Appliances, Ninth Edition, IBR approved for § 3280.703.

(3) UL 109–1997, with 2001 revisions, Tube Fittings for Flammable and Combustible Fluids, Refrigeration Service, and Marine Use, Sixth Edition, IBR approved for § 3280.703.

(4) UL 127–1996, with 1999 revisions, Factory-Built Fireplaces, Seventh Edition, IBR approved for § 3280.703.

(5) UL 174–1996, with 1997 revisions, Household Electric Storage Tank Water Heaters, Tenth Edition, IBR approved for § 3280.703.

(6) UL 181 Factory-Made Air Ducts and Air Connectors, Ninth Edition, April 4, 1996, with revisions through May 15, 2003, IBR approved for §§ 3280.702, 3280.703 and 3280.715(a).

(7) UL 181A, 1994, with 1998 revisions, Standard for Safety Closure Systems for use with Rigid Air Ducts and Air Connectors, Second Edition, IBR approved for §§ 3280.703 and 3280.715(c).

(8) UL 181B, 1995, with 1998 revisions, Standard for Safety Closure Systems for use with Flexible Air Ducts and Air Connectors, First Edition, IBR approved for §§ 3280.703 and 3280.715(c).

(9) UL 217, Single and Multiple Station Smoke Alarms, Fifth Edition, dated January 4, 1999, IBR approved for § 3280.208(a).

(10) UL 268, Smoke Detectors for Fire Protective Signaling Systems, Fourth Edition, dated January 4, 1999, IBR approved for § 3280.208(a).

(11) UL 307A–1995, Liquid Fuel-Burning Heating Appliances for Manufactured Homes and Recreational Vehicles, Seventh Edition, with 1997 revisions, IBR approved for §§ 3280.703 and 3280.707(f).

(12) UL 307B–1995, Gas Burning Heating Appliances for Manufactured Homes and Recreational Vehicles, Fourth Edition, with 1998 revisions, IBR approved for § 3280.703.

(13) UL 311, 1994, with 1998 revisions, Roof Jacks for Manufactured Homes and Recreational Vehicles, Eighth Edition, IBR approved for § 3280.703.

(14) UL 441, 1996 with 1999 revisions, Gas Vents, Ninth Edition, IBR approved for § 3280.703.

(15) UL 569, 1995 with 2001 revisions, Pigtails and Flexible Hose Connectors for LP-Gas, Seventh Edition, IBR approved for §§ 3280.703 and 3280.705(k).

(16) UL 737, 1996, Fireplace Stoves, Eight Edition, with 2000 revisions, IBR approved for § 3280.703.

(17) UL 923 Microwave Cooking Appliances, Fifth Edition, May 23, 2002, IBR approved for § 3280.204(c).

(18) UL 1042–1994, Electric Baseboard Heating Equipment, Fourth Edition, with 1998 revisions, IBR approved for § 3280.703.

(19) UL 1096, 1986, Electric Central Air Heating Equipment, Fourth Edition with revisions July 16, 1986, and January 30, 1988, IBR approved for § 3280.703.

(20) UL 1482, 1996, with 2000 revisions, Solid-Fuel Type Room Heaters, Fifth Edition, IBR approved for § 3280.703.

(21) UL 1995, 1995, Heating and Cooling Equipment, Second Edition, with 1999 revisions, IBR approved for § 3280.703.

(22) UL 2021–1997. Fixed and Location-Dedicated Electric Room Heaters, Second Edition, with 1998 revisions, IBR approved for § 3280.703.

(ii) Underwriters' Laboratories of Canada (ULC), 7 Underwriters Road, Toronto, Ontario, Canada M1 R 3A9, telephone number 866–937–3852, fax number 416–757–8727, Web site: *http://www.ul.com/canada/eng/pages/*.

(1) CAN/ULC S102.2–M88, Standard Method of Test for Surface Burning Characteristics of Floor Coverings and Miscellaneous Materials and Assemblies, Fourth Edition, April 1988, IBR approved for § 3280.207(b).

(2) [Reserved].

(jj) Window and Door Manufacturers Association (WDMA) (Previously known as the National Wood Window and Door Association, (NWWDA)), 2025 M Street, NW., Suite 800, Washington, DC 20036–3309, telephone number 202–367–1157, Web site: *https://www.wdma.com*.

(1) NWWDA I.S.4–81, Water Repellent Preservative Non-Pressure Treatment for Millwork, IBR approved for § 3280.405(b).

(2) [Reserved].

■ 3. In § 3280.105, revise paragraphs (a)(2)(iv) and (b)(2) to read as follows:

§ 3280.105 Exit facilities; exterior doors.

(a) * * *

(2) * * *

(iv) One of the required exit doors must be accessible from the doorway of each bedroom without traveling more than 35 feet. The travel distance to the exit door must be measured on the floor or other walking surface along the center-line of the natural and unobstructed path of travel starting at the center of the bedroom door, curving around any corners or permanent obstructions with a one-foot clearance from, and ending at, the center of the exit door.

(b) * * *

(2) All exterior swinging doors must provide a minimum 28-inch wide × 74-inch high clear opening. Door seals are permitted to reduce the opening, either vertically or horizontally, a maximum of one inch. All exterior sliding glass doors must provide a minimum 28-inch wide × 72-inch high clear opening.

* * * * *

■ 4. Revise § 3280.111 to read as follows:

§ 3280.111 Toilet compartments.

Each toilet compartment must have a minimum width of 30 inches, with a minimum clear space of 21 inches in front of each toilet. A toilet located adjacent to a wall must have the center-line of the toilet located a minimum of 15 inches from the wall. A toilet located adjacent to a tub must have the center-line of the toilet located a minimum of 12 inches from the outside edge of the tub.

■ 5. Amend § 3280.113 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 3280.113 Glass and glazed openings.

* * * * *

(b) *Hazardous locations requiring safety glazing*. Except as provided in paragraph (d) of this section, the following locations and areas require the use of safety glazing conforming to the requirements of paragraph (c) of this section:

(1) Glazing in all entrance or exit doors;

(2) Glazing in fixed and sliding panels of sliding glass doors;

(3) Glazing in storm-type doors;

(4) Glazing in unframed side-hinged swinging doors;

(5) Glazing in doors and fixed panels less than 60 inches above the room floor level that enclose bathtubs, showers, hydromassage tubs, hot tubs, whirlpools, saunas;

(6) Glazing within 12 inches horizontally, as measured from the edge of the door in the closed position, and 60 inches vertically as measured from the room floor level, adjacent to and in the same plane of a door;

(7) Glazing within 36 inches of an interior room walking surface when the glazing meets all of the following:

(i) Individual glazed panels exceed 9 square feet in area in an exposed surface area;

(ii) The bottom edge of the exposed glazing is less than 19 inches above the room floor level; and

(iii) The top edge of the exposed glazing is greater than 36 inches above the room floor level.

(8) Glazing in rails and guardrails; and

(9) Glazing in unbacked mirrored wardrobe doors (i.e., mirrors that are not secured to a backing that is capable of being the door itself).

(c) Safety glazing material is considered to be any glazing material capable of meeting the requirements of Consumer Product Safety Commission 16 CFR part 1201, or Standard for Safety Glazing Materials used in Buildings —Safety Performance Specifications and Methods of Test, ANSI Z97.1–2004 (incorporated by reference, see § 3280.4).

(d) Glazing in the following locations is not required to meet the requirements in paragraph (b) of this section:

(1) Openings in doors through which a 3-inch sphere is unable to pass;

(2) Leaded and decorative glazed panels;

(3) Glazing in jalousie-type doors;

(4) Glazing as described in paragraph (b)(6) of this section when an intervening wall or other permanent barrier exists between the door and the glazing;

(5) Glazing as described in paragraph (b)(7) of this section when a protective bar or member is installed horizontally between 34 inches and 38 inches above the room floor level, as long as the bar or member is a minimum of 1½ inches in height and capable of resisting a horizontal load of 50 pounds per lineal foot; and

(6) Mirrors mounted on a flush door surface or solid wall surface.

■ 6. In § 3280.204, revise paragraph (c) to read as follows:

§ 3280.204 Kitchen cabinet protection.

* * * * *

(c) *Alternative compliance.* When all exposed surfaces along the bottoms and sides of combustible kitchen cabinets are protected as described in paragraph (a) of this section, the metal hood, the 5/16-inch thick gypsum board or equivalent material, and the 3/8-inch airspace required by paragraph (a) of this section can be omitted, provided that:

(1) A microwave oven is installed between the cabinet and the range; and

(2) The microwave oven is equivalent in fire protection to the metal range hood required by paragraph (a) of this section; and

(3) The microwave oven is certified to be in conformance with Microwave Cooking Appliances, UL 923–2002 (incorporated by reference, see § 3280.4).

* * * * *

§§ 3280.207 through 3280.209 [Redesignated as §§ 3280.208 through 3280.210]

■ 7. Redesignate §§ 3280.207 through 3280.209 as §§ 3280.208 through 3280.210, respectively.

■ 8. Add a new § 3280.207 to read as follows:

§ 3280.207 Requirements for thermal insulating materials.

(a) *General.* Except for foam plastic materials and as provided in this section, exposed and concealed thermal insulating materials, including any facings, must be tested in accordance with NFPA 255–96, Standard Method of Test of Surface Burning Characteristics of Building Materials (incorporated by reference, see § 3280.4) and must have a flame spread index of 25 or less and a smoke developed index of 450 or less. The flame spread and smoke developed limitations do not apply to:

(1) Coverings and facings of insulation batts or blankets installed in concealed spaces when the facings are in substantial contact with the unexposed surface of wall, floor, or ceiling finish; or

(2) Cellulose loose-fill insulation that complies with paragraph (b) of this section.

(b) *Loose-fill insulation.* (1) Cellulose loose-fill insulation that is not spray-applied or self-supporting must comply with, and each package must be labeled in accordance with the Consumer Product Safety Commission requirements in 16 CFR parts 1209 and 1404.

(2) Other loose-fill insulation that cannot be mounted in the NFPA 255–96, test apparatus without a screen or other artificial support must be tested in accordance with CAN/ULC S102.2–M88, Standard Method of Test for Surface Burning Characteristics of Floor Coverings and Miscellaneous Materials and Assemblies (incorporated by reference, see § 3280.4), and must have a flame spread index of 25 or less and a smoke developed index of 450 or less.

(c) *Attic locations.* Exposed insulation installed on the floor or ceiling forming the lower boundary of the attic must be tested in accordance with NFPA 253–2000, Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source (incorporated by reference, see § 3280.4) and must have a critical radiant flux of not less than 0.12 watt/cm^2.

■ 9. Revise § 3280.301 to read as follows:

§ 3280.301 Scope.

This subpart covers the minimum requirements for materials, products, equipment, and workmanship needed to assure that the manufactured home will provide the following:

(a) Structural strength and rigidity;

(b) Protection against corrosion, decay, insects, rodents, and other similar destructive forces;

(c) Protection against wind hazards;

(d) Resistance to the elements; and

(e) Durability and economy of maintenance.

■ 10. Amend § 3280.304(b)(1) as follows:

■ a. In the list under the undesignated heading ''Wood and Wood Products,'' revise the references to ''Design and Fabrication of Glued Plywood-Lumber Beams,'' ''Design and Fabrication of Plywood Sandwich Panels,'' ''Design and Fabrication of Plywood Stressed Skin Panels,'' and ''Wood Structural Design Data;''

■ b. In the list under the undesignated heading ''Wood and Wood Products,'' remove the reference to ''Voluntary Product Standards, Performance Standard for Wood-Based Structural Use Panels,'' and add in its place a reference to ''Performance Standards for Wood-Based Structural Use Panels;''

■ c. In the list under the undesignated heading ''Wood and Wood Products,'' add new reference standards for ''Engineered Wood Construction Guide'' and for ''Medium Density Fiberboard (MDF),'' immediately preceding the undesignated heading ''Other''; and

■ d. In the list under the undesignated heading ''Unclassified,'' remove the

reference to ''Safety Performance Specifications and Methods of Test for Safety Glazing Materials Used in Buildings—ANSI/Z–97.1–1984,'' and add in its place a reference to ''Standard for Safety Glazing Materials used in Buildings —Safety Performance Specifications and Methods of Test, ANSI Z97.1–2004 (incorporated by reference, see § 3280.4).''

The revisions and additions to read as follows:

§ 3280.304 Materials.

* * * * *

(b)(1) * * *

Wood and Wood Products

* * * * *

Design and Fabrication of Glued Plywood-Lumber Beams, Supplement # 2—APA S 812R, 1992 (incorporated by reference, see § 3280.4).

* * * * *

Design and Fabrication of Plywood Sandwich Panels, Supplement #4—APA U 814H, 1990 (incorporated by reference, see § 3280.4).

Performance Standard for Wood-Based Structural Use Panels—NIST PS 2–04, 2004 (incorporated by reference, see § 3280.4).

Design and Fabrication of Plywood Stressed-Skin Panels, Supplement 3—APA–U 813L, 1992 (incorporated by reference, see § 3280.4).

* * * * *

Wood Structural Design Data, 1986 Edition with 1992 Revisions, AFPA.

* * * * *

Engineered Wood Construction Guide—APA E30R 2001 (incorporated by reference, see § 3280.4).

Medium Density Fiberboard (MDF) For Interior Applications—ANSI A208.2–2002 (incorporated by reference, see § 3280.4).

* * * * *

Unclassified

* * * * *

Standard for Safety Glazing Materials used in Buildings—Safety Performance Specifications and Methods of Test, ANSI Z97.1–2004 (incorporated by reference, see § 3280.4).

* * * * *

■ 11. In § 3280.305, revise paragraphs (c)(1)(i), (c)(2)(iv), and (c)(3)(ii) to read as follows:

§ 3280.305 Structural design requirements.

* * * * *

(c) * * *

(1) * * *

(i) *Standard wind loads (Zone I).* When a manufactured home is not designed to resist the wind loads for high-wind areas (Zone II or Zone III) specified in paragraph (c)(1)(ii) of this section, the manufactured home and each of its wind-resisting parts and portions must be designed for horizontal wind loads of not less than 15 psf and a net uplift roof load of not less than 9 psf. The net uplift roof load must not be reduced by the dead load of the roof structure for the purposes of engineering design or structural load testing.

* * * * *

(2) * * *

(iv) *Consideration of local requirements.* For areas where wind mapping data or records or the requirements of the State or local authority indicate wind speeds in excess of those identified in this section, the Department may establish, through rulemaking, more stringent requirements for manufactured homes to be installed in such areas.

(3) * * *

(ii) *Consideration of local requirements.* For exposures in areas (mountainous or other) where recognized snow records, wind records, or the requirements of the State or local authority indicate significant differences from the loads stated in this paragraph (c)(3), the Department may establish, through rulemaking, more stringent requirements for manufactured homes to be installed in such areas. For snow loads, such requirements must be based on a roof snow load of 0.6 of the ground snow load for areas exposed to wind and a roof snow load of 0.8 of the ground snow load for sheltered areas.

* * * * *

■ 12. In § 3280.306, revise paragraphs (b)(2)(v) and (g)(2) to read as follows:

§ 3280.306 Windstorm protection.

* * * * *

(b) * * *

(2) * * *

(v) That anchoring equipment should be certified by a registered professional engineer or architect to resist these specified forces in accordance with testing procedures in ASTM D3953–97, Standard Specification for Strapping, Flat Steel and Seals (incorporated by reference, see § 3280.4).

* * * * *

(g) * * *

(2) Type 1, Finish B, Grade 1 steel strapping, 1¼ inches wide and 0.035 inches in thickness, certified by a registered professional engineer or architect as conforming with ASTM D3953–97, Standard Specification for Strapping, Flat Steel and Seals (incorporated by reference, see § 3280.4).

■ 13. In § 3280.403, revise the section heading and paragraph (a), redesignate paragraph (b) as (b)(1), add paragraph (b)(2), revise paragraphs (c) and (d)(1), and add paragraph (e)(3) to read as follows:

§ 3280.403 Requirements for windows, sliding glass doors, and skylights.

(a) *Scope.* This section establishes the requirements for prime windows and sliding glass doors, except that windows used in an entry door are components of the door and are excluded from these requirements.

(b) * * *

(2) All skylights must comply with AAMA/WDMA/CSA/101/I.S.2/A440–08: North American Fenestration Standard/Specifications for Windows, Doors and Skylights (incorporated by reference, see § 3280.4). Skylights must withstand the roof loads for the applicable Roof Load Zone specified in § 3280.305(c)(3), and the following wind loads:

(i) For Wind Zone I, the wind loads specified in § 3280.305(c)(1)(i); and

(ii) For Wind Zones II and III, the wind loads specified for exterior roof coverings, sheathing, and fastenings in § 3280.305(c)(1)(ii).

(c) *Installation.* All primary windows, sliding glass doors, and skylights must be installed in a manner that allows proper operation and provides protection against the elements, as required by § 3280.307.

(d) * * *

(1) Safety glazing materials, where used shall meet Standard for Safety Glazing Materials used in Buildings—Safety Performance Specifications and Methods of Test, ANSI Z97.1–2004 (incorporated by reference, see § 3280.4).

* * * * *

(e) * * *

(3) All skylights installed in manufactured homes must be certified as complying with AAMA/WDMA/CSA 101/I.S.2/A440–08: North American Fenestration Standard/Specifications for Windows, Doors, and Skylights (incorporated by reference, see § 3280.4). This certification must be based on applicable loads specified in paragraph (b) of this section.

* * * * *

■ 14. In § 3280.404, revise paragraph (c)(2) and add paragraph (c)(3) to read as follows:

§ 3280.404 Standard for egress windows and devices for use in manufactured homes.

* * * * *

(c) * * *

(2) An operational check of each installed egress window or device must be made at the manufactured home

factory. All egress windows and devices must be capable of being opened to the minimum required dimensions by normal operation of the window without binding or requiring the use of tools. Any window or device failing this check must be repaired or replaced. A repaired window must conform to its certification. Any repaired or replaced window or device must pass the operational check.

(3) Windows that require the removal of the sash to meet egress size requirements are prohibited.

* * * * *

■ 15. Amend § 3280.504 as follows:

■ a. Add ''(incorporated by reference, see § 3280.4)'' immediately following ''Materials)'' in paragraph (a)(1).

■ b. Redesignate paragraph (c) as paragraph (d) and add new paragraph (c).

The addition reads as follows:

§ 3280.504 Condensation control and installation of vapor retarders.

* * * * *

(c) *Liquid applied vapor retarders.* Each liquid applied vapor retarder must be tested by a nationally recognized testing agency for use on the specific substrate to which it is applied. The test report must include the perm rating, as measured by ASTM E 96–95, Standard Test Methods for Water Vapor Transmission of Materials, and associated application rate for each specific substrate.

* * * * *

■ 16. In § 3280.509, revise paragraph (c) to read as follows:

(c) *Insulation compression.* Insulation compressed to less than nominal thickness and loose-fill insulation in sloping cavities must have its nominal R-values reduced in compressed areas in accordance with the following table:

TABLE TO PARAGRAPH (C)—EFFECT OF INSULATION COMPRESSION AND RESTRICTION ON *R*-VALUES

Original thickness (%)	Non-uniform (a) restriction		Uniform (b) compression batt (%)
	Batt (%)	Blown (%)	
0	20	15	0
1	26	21	1
2	32	25	2
3	36	28	4
4	38	30	5
5	41	32	7
6	43	33	8
7	45	35	10
8	46	36	11
9	48	38	13
10	49	39	14
11	51	40	15
12	52	42	17
13	53	43	18
14	54	44	20
15	55	45	21
16	57	46	22
17	58	47	24
18	59	48	25
19	59	49	26
20	60	50	28
21	61	51	29
22	62	52	30
23	63	52	31
24	64	53	33
25	65	54	34
26	65	55	35
27	66	56	36
28	67	57	37
29	68	57	39
30	68	58	40
31	69	59	41
32	70	60	42
33	70	60	43
34	71	61	44
35	72	62	45
36	72	63	47
37	73	63	48
38	74	64	49
39	74	65	50
40	75	65	51
41	75	66	52
42	76	67	53
43	76	68	54
44	77	68	55
45	78	69	56
46	78	70	57
47	79	70	58
48	79	71	59
49	80	71	60
50	80	72	61
51	81	73	62
52	81	73	63
53	82	74	64
54	82	75	65
55	83	75	65
56	83	76	66
57	84	76	67
58	84	77	68
59	84	78	69
60	85	78	70
61	85	79	71
62	86	79	72
63	86	80	73
64	87	81	74
65	87	81	74
66	88	82	75
67	88	82	76
68	88	83	77
69	89	84	78
70	89	84	78
71	90	85	79
72	90	85	80
73	90	86	81
74	91	86	82
75	91	87	82
76	92	87	83
77	92	88	84
78	92	89	85
79	93	89	85
80	93	90	86
81	93	90	87
82	94	91	88
83	94	91	88
84	95	92	89
85	95	92	90
86	95	93	91
87	96	93	91
88	96	94	92
89	96	94	93
90	97	95	93
91	97	95	94
92	97	96	95
93	98	96	95
94	98	97	96
95	98	97	97
96	99	98	97
97	99	98	98
98	99	99	99
99	100	99	99
100	100	100	100

Note: To use this table, first compute the restricted insulation thickness as a fraction of the uncompressed (full) insulation thickness. Then look up the *R*-value remaining from the appropriate column (Non-uniform Restriction, Batt Non-uniform Restriction, Blown or Uniform Compression, Batt). Example: Assume a section of loose-fill ceiling insulation went from *R*-25 insulation at a height of 10 inches to a minimum height of 2 inches at the edge of the ceiling. The ratio of minimum to full thickness is 0.20 (2 divided by 10). Look up 0.20 (20 percent), read across to column 3 (Non-uniform Restriction, Blown), and read 50 percent. Therefore, the *R*-value of the loose-fill insulation over the restricted area would be *R*-12.5 (50 percent of 25).

(a) Non-uniform restriction is that which occurs between non-parallel planes, such as in the ceiling near the eaves.

(b) Uniform compression is compression between parallel planes, such as that which occurs in a wall.

* * * * *

■ 17. In § 3280.602, remove the definition for *Anti-siphon trap vent device* and add a definition for *Mechanical trap vent device* in alphabetical order, to read as follows:

§ 3280.602 Definitions.

* * * * *

Mechanical trap vent device means a device that automatically opens to admit air to a fixture drain above the connection of the trap arm so as to prevent siphonage, and closes tightly when the pressure within the drainage system is equal to or greater than atmospheric pressure, so as to prevent

the escape of gases from the drainage system into the manufactured home.

* * * * *

■ 18. In § 3280.603, revise paragraphs (a)(2), (b)(4)(ii), and (b)(4)(iii) to read as follows:

§ 3280.603 General requirements.

(a) * * *

(2) *Conservation.* Each water closet must not use more than 1.6 gallons of water per flush.

* * * * *

(b) * * *

(4) * * *

(ii) A statement in the installation instructions required by § 3280.306(b), stating that if the heat tape or pipe heating cable is used, it must be listed for use with manufactured homes.

(iii) A receptacle outlet complying with § 3280.806(d)(10).

* * * * *

■ 19. Amend § 3280.604(b)(2) as follows:

■ a. In the list under the undesignated heading ''Plastic Pipe and Fittings'', add reference standards for ''Standard Specification for Crosslinked Polyethylene (PEX) Tubing'' and ''Standard Specification for Crosslinked Polyethylene (PEX) Plastic Hot- and Cold-Water Distribution Systems,'' immediately before the undesignated heading ''Miscellaneous'';

■ b. In the list under the undesignated heading ''Miscellaneous'', revise the reference standard for ''Standard Specification for Rubber Gaskets for Cast Iron Soil Pipe and Fittings'' and ''Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply Systems'';

■ c. In the undesignated heading ''Plumbing Fixtures'', revise the reference standard for ''Safety Performance Specifications and Methods of Test for Safety Glazing Materials Used in Buildings''; and

■ d. In the undesignated heading ''Plumbing Fixtures'', add a reference standard for ''Performance Requirements for Automatic Compensating Values for Individual Shower and Tub/Shower Combinations'' at the end of the list.

The revisions and additions to read as follows:

§ 3280.604 Materials.

* * * * *

(b) * * *

(2) * * *

Plastic Pipe and Fittings

* * * * *

Standard Specification for Crosslinked Polyethylene (PEX) Tubing—ASTM F876–10 (incorporated by reference, see § 3280.4).

Standard Specification for Crosslinked Polyethylene (PEX) Plastic Hot- and Cold-Water Distribution Systems—ASTM F877–07 (incorporated by reference, see § 3280.4).

Miscellaneous

* * * * *

Standard Specification for Rubber Gaskets for Cast Iron Soil Pipe and Fittings, ASTM C564–97 (incorporated by reference, see § 3280.4).

* * * * *

Relief Valves for Hot Water Supply Systems, ANSI Z21.22–1999 (incorporated by reference, see § 3280.4).

* * * * *

Standard for Safety Glazing Materials used in Buildings—Safety Performance Specifications and Methods of Test, ANSI Z97.1–2004 (incorporated by reference, see § 3280.4).

* * * * *

Plumbing Fixtures

* * * * *

Performance Requirements for Automatic Compensating Values for Individual Shower and Tub/Shower Combinations, approved January 2005 ASSE 1016–2005 (incorporated by reference, see § 3280.4).

■ 20. Amend § 3280.605 as follows:

■ a. Redesignate paragraphs (a)(1) through (7) as paragraphs (b) through (h);

■ b. Redesignate paragraphs (i) and (ii) of newly redesignated paragraph (h) as paragraphs (h)(1) and (2); and

■ c. Revise newly redesignated paragraph (h)(1) to read as follows:

§ 3280.605 Joints and connections.

* * * * *

(h) * * *

(1) Approved or listed hub-less pipe and fittings must be permitted to be joined with listed couplings or adapters, per the manufacturer's recommendations.

* * * * *

■ 21. In § 3280.606, revise paragraph (a)(2) to read as follows:

§ 3280.606 Traps and cleanouts.

(a) * * *

(2) *Combination Fixtures.* For the purposes of drainage and ventilation requirements, a two- or three-compartment sink, up to three single sinks, or up to three lavatories may be connected to one ''P'' trap and considered as a single fixture, so long as the sinks and lavatories are in the same room, have waste outlets not more than 30 inches apart, and have flood level rims at the same level. The ''P'' trap must be installed at the center fixture when three such fixtures are installed.

* * * * *

■ 22. In § 3280.607, revise paragraphs (a)(3), (b)(2)(v), (b)(3)(iii), add paragraph (b)(3)(v), and revise paragraphs (b)(4)(i), (b)(5)(ii), and (c)(6)(i) through (iii) to read as follows:

§ 3280.607 Plumbing fixtures.

(a) * * *

(3) *Fixture Connections.* Fixture tailpieces and continuous wastes in exposed or accessible locations must be of not less than No. 20 Brown and Sharpe gauge seamless drawn-brass tubing or other approved pipe or tubing materials. Inaccessible fixture connections must be constructed according to the requirements for drainage piping. The diameter of each fixture tailpiece, continuous waste, or waste and overflow must be not less than:

(i) 1½ inches, for sinks of two or more compartments, dishwashers, clothes washing machines, laundry tubs, bathtubs, and showers; and

(ii) Not less than 1¼ inches for lavatories or single compartment sinks having a 2-inch maximum drain opening.

* * * * *

(b) * * *

(2) * * *

(v) *Floor Connection.* Water closets must be securely bolted to an approved flange or other approved fitting that is secured to the floor by means of corrosion-resistant screws. The bolts must be of solid brass or other corrosion-resistant material and must not be less than ¼ inch in diameter. A watertight seal must be made between the water closet and flange or other approved fitting by use of a gasket, sealing compound, or listed connector device.

(3) * * *

(iii) Shower doors and tub and shower enclosures shall be constructed so as to be waterproof and, if glazed, glazing shall comply with the Standard for Safety Glazing Materials used in Buildings—Safety Performance Specifications and Methods of Test, ANSI Z97.1–2004 (incorporated by reference, see § 3280.4).

* * * * *

(v) Shower, bathtub, and tub-shower combination valves must be balanced pressure, thermostatic, or combination mixing valves that conform to the requirements of ASSE 1016–2005, Performance Requirements for Automatic Compensating Values for

Individual Shower and Tub/Shower Combinations (incorporated by reference, see § 3280.4). Such valves must be equipped with handle position stops that are adjustable in accordance with the valve manufacturer's instructions to a maximum setting of 120 °F.

(4) * * *

(i) A dishwashing machine must discharge its waste through a fixed air gap installed above the machine, through a high loop as specified by the dishwashing machine manufacturer, or into an open standpipe receptor with a height greater than the washing compartment of the machine. When a standpipe is used, it must be at least 18 inches, but not more than 30 inches, above the trap weir. The drain connections from the air gap or high loop are permitted to connect to an individual trap to a directional fitting installed in the sink tailpiece or to an opening provided on the inlet side of a food waste disposal unit.

* * * * *

(5) * * *

(ii) Standpipes must be either 1½ inch diameter minimum nominal iron pipe size, 1½ inch diameter nominal brass tubing of not less than No. 20 Brown and Sharp gauge, or 1½ inch diameter approved plastic materials. Receptors must discharge into a vented trap or must be connected to a laundry tub appliance by means of an approved or listed directional fitting. Each standpipe must extend not less than 18 inches or more than 42 inches above its trap and must terminate in an accessible location no lower than the top of the clothes washing machine. A removable, tight-fitting cap or plug must be installed on the standpipe when the clothes washer is not provided.

* * * * *

(c) * * *

(6) *Hydromassage bathtub*—(i) *Access panel.* A door or panel of sufficient size must be installed to provide access to the pump for repair or replacement.

(ii) *Piping drainage.* The circulation pump must be accessibly located above the crown weir of the trap. The pump drain line must be properly sloped to drain the volute after fixture use.

(iii) *Piping.* Hydromassage bathtub circulation piping must be installed to be self-draining.

* * * * *

■ 23. In § 3280.609, revise paragraphs (b)(7) and (8) to read as follows:

§ 3280.609 Water distribution systems.

* * * * *

(b) * * *

(7) *Hose bibbs.* When provided, all exterior hose bibbs and laundry sink hose connections must be protected by a listed nonremovable backflow prevention device. This requirement is not applicable to hose connections provided for automatic washing machines with built-in backflow prevention or water heater drain valves.

(8) *Flushometer tanks.* Flushometer tanks must be equipped with an approved air gap or vacuum breaker assembly that is located above the flood-level rim above the fixture.

* * * * *

■ 24. In § 3280.610, revise paragraphs (b)(1) and (e) to read as follows:

§ 3280.610 Drainage systems.

* * * * *

(b) * * *

(1) *Pipe.* Drainage piping must be standard weight galvanized steel, brass, copper tube DWV, listed Scheduled 40 ABS plastic, listed Scheduled 40 PVC plastic, cast iron, or other listed or approved materials.

* * * * *

(e) *Size of drainage piping.* Fixture drains must be sized as follows:

(1) Fixture drains serving a single lavatory must be a minimum of 1¼ inches in diameter.

(2) Fixture drains serving two or three fixtures must be a minimum of 1½ inches in diameter.

(3) Fixture drains serving four or more fixtures that are individually vented must be a minimum of 2 inches in diameter.

(4) Fixture drains for water closets must be a minimum of 3 inches in diameter.

* * * * *

■ 25. In § 3280.611, revise paragraphs (b)(1), (d), and (f) to read as follows:

§ 3280.611 Vents and venting.

* * * * *

(b) * * *

(1) *Pipe.* Vent piping must be standard weight galvanized steel, brass, copper tube DWV, listed Scheduled 40 ABS plastic, listed Scheduled 40 PVC plastic, cast iron, or other listed or approved materials.

* * * * *

(d) *Mechanical Vents.* Where mechanical vents are used as a secondary vent system for plumbing fixtures that are protected by traps, the mechanical vents must comply with paragraphs (d)(1) or (2) of this section.

(1) Spring-operated mechanical (anti-siphon) vents must comply with the following:

(i) No more than two fixtures individually protected by the spring-operated mechanical vent may be drained by a common 1½ inch diameter drain.

(ii) The drain size for three or more fixtures individually protected by a spring-operated mechanical vent must be at least 2 inches in diameter.

(iii) Spring-operated mechanical vents are restricted to venting fixtures with 1½ inch traps.

(iv) A spring-operated mechanical vent must be installed in a location that allows a free flow of air and is accessible for inspection, maintenance, and replacement. The sealing function must be at least 6 inches above the top of the trap arm.

(v) Materials for the spring-operated mechanical vents must be as follows:

(A) Cap and housing must be listed acrylonitrile-butadiene-styrene, DWV grade;

(B) Stem must be DWV grade nylon or acetal;

(C) Spring must be stainless steel wire, Type 302; and

(D) Sealing disc must be either:

(*1*) Neoprene, conforming to CISPI–HSN–85, Specification for Neoprene Rubber Gaskets for HUB and Spigot Cast Iron Soil Pipe and Fittings (incorporated by reference, see § 3280.4), and to ASTM C564–97, Standard Specification for Rubber Gaskets for Cast Iron Soil Pipe and Fittings (incorporated by reference, see § 3280.4); or

(*2*) Other material, conforming to ASTM C920–02, Standard Specification for Elastomeric Joint Sealants (incorporated by reference, see § 3280.4), and to ASTM D4635–01, Standard Specification for Polyethylene Films Made from Low-Density Polyethylene for General Use and Packaging Applications (incorporated by reference, see § 3280.4).

(2) Gravity-operated mechanical (air admittance valves) vents must comply with the following:

(i) Where installed to vent any fixture, the drain system must have a minimum 1½ inch diameter vent that terminates outside the manufactured home.

(ii) Where gravity-operated mechanical vent devices terminate in the attic cavity, the following requirements must be met:

(A) The attic cavity must be accessible;

(B) The sealing device must be installed a minimum of 6 inches above the insulation materials; and

(C) The attic must be vented in accordance with § 3280.504(c)(1)(i);

(3) Mechanical vents must be installed in accordance with the vent manufacturer's instructions.

* * * * *

(f) *Vent terminal.* Vents must terminate through the roof or wall, or to a mechanical vent device in accordance with paragraph (d) of this section.

(1) *Roof extension.* Each vent pipe must extend through its flashing and terminate vertically. Vents that extend through the roof must extend undiminished in size, not less than 2 inches above the roof. Vent openings must be at least 3 feet away from any motor-driven air intake that opens into any habitable area.

(2) *Wall extensions.* Extensions through exterior walls must terminate downward, have a screen to prevent entrance of birds and rodents, and be located as follows:

(i) Extensions must not be located beneath a door, window, or other opening;

(ii) Extensions must be a minimum of 10 feet above the finished floor;

(iii) Extensions must be located a minimum of 2 feet above any building opening that is within 10 feet horizontally of any extension; and

(iv) Extensions must not terminate under an overhang with soffit vents.

(3) *Flashing.* The opening around each vent pipe shall be made watertight by an adequate flashing or flashing material.

* * * * *

■ 26. In § 3280.702:

■ a. Revise the definitions of ''Class 0 air ducts,'' and ''Class 1 air ducts'';

■ b. Remove the definition of ''Class 2 air ducts'';

■ c. Add in alphabetical order definitions of ''Combination space heating and water heating appliance,'' ''Direct-vent system,'' and ''Direct-vent system appliance'';

■ d. Remove the definition of ''Energy efficiency ratio (EER)''; and

■ e. Revise the definitions of ''Heating appliance'' and ''Water heater''.

The additions and revisions read as follows:

§ 3280.702 Definitions.

* * * * *

Class 0 air ducts and air connectors means air ducts and air connectors having a fire hazard classification of zero when tested in accordance with UL 181–2003, Factory-Made Air Ducts and Air Connectors (incorporated by reference, see § 3280.4).

Class 1 air ducts and air connectors means air ducts and air connectors having a flame spread rating of not over 25 without evidence of continued progressive combustion and a smoke developed rating of not over 50 when tested in accordance with UL 181–2003, Standard for Safety Factory-Made Air Ducts and Air Connectors (incorporated by reference, see § 3280.4).

* * * * *

Combination space heating and water heating appliance means a listed unit that is designed to provide space heating and water heating from a single primary energy source.

* * * * *

Direct-vent system means a system or method of construction where all air for combustion is derived directly from the outside atmosphere and all flue gases are discharged to the outside atmosphere.

Direct-vent system appliance means an appliance that is installed with a direct vent system.

* * * * *

Heating appliance means an appliance for comfort heating, domestic water heating, or a combination of comfort heating and domestic water heating.

* * * * *

Water heater means an appliance for heating water for domestic purposes.

■ 27. In § 3280.703:

■ a. Under the undesignated heading ''Appliances,'' add a reference standard for ''Decorative Gas Appliances for Installation in Solid Fuel Burning Appliances'' after the standard for ''Gas-Fired Central Furnace'';

■ b. Under the undesignated heading ''Nonferrous Pipe, Tubing, and Fittings,'' revise the reference standard for ''Standard Specification for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service''; and

■ c. Under the undesignated heading ''Miscellaneous,'' revise the reference standards for ''Factory-Made Air Ducts and Connectors,'' ''Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply System,'' ''Gas Appliance Thermostats,'' and ''Standard for the Installation of Oil-Burning Equipment.''

The revisions and additions to read as follows:

§ 3280.703 Minimum standards.

* * * * *

Appliances

* * * * *

Decorative Gas Appliances for Installation in Solid Fuel Burning Fireplaces—RADCO DS–010–91 (incorporated by reference, see § 3280.4).

* * * * *

Nonferrous Pipe, Tubing, and Fittings

* * * * *

Standard Specification for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service—ASTM B280–95a.

* * * * *

Miscellaneous

Factory-Made Air Ducts and Air Connectors, UL 181, Ninth Edition, April 4, 1996, with revisions through May 15, 2003 (incorporated by reference, see § 3280.4).

* * * * *

Relief Valves for Hot Water Supply Systems, ANSI Z21.22–1999, (incorporated by reference, see § 3280.4).

* * * * *

Gas Appliance Thermostats—ANSI Z21.23–93 (incorporated by reference, see § 3280.4).

* * * * *

Standard for the Installation of Oil-Burning Equipment, NFPA 31–01 (incorporated by reference, see § 3280.4).

* * * * *

§ 3280.704 [Removed and Reserved]

■ 28. Remove and reserve § 3280.704.

■ 29. Amend § 3280.705 as follows:

■ a. Add paragraph (b)(5);

■ b. Add Table to paragraph (d);

■ c. Revise paragraph (f)(1);

■ d. Revise paragraph (h); and

■ e. Remove the Table designated ''Part I'' and the reference to ''Part II [Reserved]''.

The additions and revisions read as follows:

§ 3280.705 Gas piping systems.

* * * * *

(b) * * *

(5) Corrugated stainless steel tubing (CSST) systems must be listed and installed in accordance with ANSI/IAS LC–1–1997, Fuel Gas Piping Systems Using Corrugated Stainless Steel Tubing (CSST) (incorporated by reference, see § 3280.4), and the requirements of this section.

* * * * *

(d) * * *

TABLE TO PARAGRAPH (D)—MAXIMUM CAPACITY OF DIFFERENT SIZES OF PIPE AND TUBING IN THOUSANDS OF BTU/HR OF NATURAL GAS FOR GAS PRESSURES OF 0.5 PSIG OR LESS, AND A MAXIMUM PRESSURE DROP OF ½ IN. WATER COLUMN

ID (in.)		10 ft	20 ft	30 ft	40 ft	50 ft	60 ft	70 ft	80 ft	90 ft	100 ft
Iron Pipe Sizes—Length											
¼		43	29	24	20	18	16	15	14	13	12
⅜		95	65	52	45	40	36	33	31	29	27
½		175	120	97	82	73	66	61	57	53	50
¾		360	250	200	170	151	138	125	118	110	103
1		680	465	375	320	285	260	240	220	215	195
EHD [2]	ID (in.)	10 ft	20 ft	30 ft	40 ft	50 ft	60 ft	70 ft	80 ft	90 ft	100 ft
Corrugated Stainless Steel Tubing—Length [1]											
13	⅜	31	21	17	14	13	12	11	10	10	9
15	⅜	42	30	24	20	18	16	15	14	13	12
18	½	79	56	45	39	36	33	30	28	27	25
19	½	91	64	52	45	40	36	35	32	31	29
23	¾	155	111	92	80	72	65	60	58	55	52
25	¾	184	132	108	93	84	77	71	66	62	60
30	1	317	222	180	156	138	126	116	108	103	97
31	1	368	258	209	180	161	147	135	127	120	113
37	1¼	598	426	350	304	273	250	231	217	205	195
OD (in.)		10 ft	20 ft	30 ft	40 ft	50 ft	60 ft	70 ft	80 ft	90 ft	100 ft
Copper Tubing—Length											
¼		27	18	15	13	11	10	9	9	8	8
⅜		56	38	31	26	23	21	19	18	17	16
½		113	78	62	53	47	43	39	37	34	33
¾		197	136	109	93	83	75	69	64	60	57
1		280	193	155	132	117	106	98	91	85	81

[1] Includes losses for four 90-degree bends and two end fittings. Tubing runs with larger numbers of bend and/or fittings shall be increased by an equivalent length of tubing according to the following equation: $L = 1.3n$, where L is actual length (ft) of tubing and n is the number of additional fittings and/or bends.

[2] EHD (Equivalent Hydraulic Diameter)—A measure of the hydraulic efficiency between different tubing sizes.

* * * * *

(f) * * *

(1) Tubing joints shall be made with either a single or a double flare of 45 degrees in accordance with Flares For Tubing, SAE–J533b–1992 or with other listed vibration-resistant fittings, or joints may be brazed with material having a melting point exceeding 1,000 °F. Metallic ball sleeve compression-type tubing fittings shall not be used.

* * * * *

(h) *Concealed tubing.* (1) Copper tubing must not be run inside walls, floors, partitions, or roofs. Corrugated stainless steel tubing (CSST) may be run inside walls, floors, partitions, and roofs under the following conditions:

(i) The CSST is protected from accidental puncture by a steel strike barrier not less than 0.058 inch thick, or the barrier's equivalent, installed between the tubing and the finished wall and extending 4 inches beyond concealed penetrations of plates, firestops, and wall studs, or specified by the tubing manufacturer's instructions; and

(ii) The CSST is installed in single runs and is not rigidly secured.

(2) Where tubing passes through exterior walls, floors, partitions, or similar construction, the tubing must be protected by the use of weather-resistant grommets that snugly fit both the tubing and the hole through which the tubing passes, or protected as specified in the tubing manufacturer's instructions.

(3) Concealed joints: Piping or tubing joints must not be located in any wall, floor, partition, or similar concealed construction space.

* * * * *

■ 30. In § 3280.706, revise paragraph (j) to read as follows:

§ 3280.706 Oil piping systems.

* * * * *

(j) *Testing Tag.* A tag must be affixed to each oil-fired appliance stating: ''Before setting the system in operation, tank installations and piping must be checked for oil leaks with fuel oil of the same grade that will be burned in the appliance. No other material may be used for testing fuel oil tanks and piping. Tanks must be filled to maximum capacity for the final check for oil leakage.''

■ 31. In § 3280.707, revise paragraph (a)(2), add paragraph (d) introductory text, and revise paragraphs (d)(2) and (f) introductory text to read as follows:

§ 3280.707 Heat producing appliances.

(a) * * *

(2) Each gas and oil burning comfort heating appliance must have an Annual Fuel Utilization Efficiency of not less than that specified in 10 CFR part 430, Energy Conservation Program for Consumer Products: Test Procedures for Furnaces/Boilers, Vented Home Heating Equipment and Pool Heaters.

* * * * *

(d) *Performance efficiency.* Each automatic storage water heater must comply with the efficiency requirements of 10 CFR part 430, Energy Conservation Program for Consumer Products: Energy Conservation Standards for Water Heaters.

* * * * *

(2) All gas and oil-fired automatic storage water heaters shall have a recovery efficiency, E, and a standby loss, S, as described below. The method of test of E and S shall be as described in section 2.7 of Gas Water heaters, Vol.

I, Storage Water Heaters with Input/Ratings of 75,000 BTU per hour or less, ANSI Z21.10.1–1998 with addendums Z21.10.1a–2000, and Z21.10.1b–1992, except that for oil-fired units. CF=1.0, Q=total gallons of oil consumed and H=total heating value of oil in BTU/gallon.

Storage capacity in gallons	Recovery efficiency	Standby loss
Less than 25	At least 75 percent.	Not more than 7.5 percent.
25 up to 35	00	Not more than 7 percent.
35 or more	00	Not more than 6 percent.

* * * * *

(f) *Oil-fired heating equipment.* All oil-fired heating equipment must conform to Liquid Fuel-burning Heating Appliances for Manufactured Homes and Recreational Vehicles, UL 307A–1995, with 1997 revisions, and be installed in accordance with Standard for the Installation of Oil Burning Equipment, NFPA 31–01 (incorporated by reference, see § 3280.4). Regardless of the requirements of the above-referenced standards, or any other standards referenced in this part, the following are not required:

* * * * *

■ 32. Revise § 3280.711 to read as follows:

§ 3280.711 Instructions.

Operating instructions must be provided with each appliance. The operating and installation instructions for each appliance must be provided with the homeowner's manual.

■ 33. Amend § 3280.714 as follows:

■ a. Add ''(incorporated by reference, see § 3280.4)'' immediately following ''Heat Pump Equipment'' in paragraph (a)(1) introductory text and immediately following ''Heat Pump Appliances'' in paragraph (a)(2); and

■ b. Revise paragraphs (a)(1)(i) and (ii).

The revisions read as follows:

§ 3280.714 Appliances, cooling.

(a) * * *

(1) * * *

(i) Electric motor-driven unitary air-cooled air conditioners and heat pumps in the cooling mode with rated capacity less than 65,000 BTU/hour (19,045 watts), when rated at ARI standard rating conditions in ARI Standard 210/240–89, Unitary Air-Conditioning and Air-Source Heat Pump Equipment, must have seasonal energy efficiency (SEER) values not less than as specified in 10 CFR Part 430, Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards.

(ii) Heat pumps must be certified to comply with all requirements of the ARI Standard 210/240–89, Unitary Air Conditioning and Air-Source Heat Pump Equipment. Electric motor-driven vapor compression heat pumps with supplemental electrical resistance heat must be sized to provide by compression at least 60 percent of the calculated annual heating requirements for the manufactured home being served. A control must be provided and set to prevent operation of supplemental electrical resistance heat at outdoor temperatures above 40 °F (4 °C), except for defrost conditions. Electric motor-driven vapor compression heat pumps with supplemental electric resistance heat conforming to ARI Standard 210/240–89, Unitary Air-Conditioning and Air-Source Heat Pump Equipment, must have Heating Season Performance Factor (HSPF) efficiencies not less than as specified in the 10 CFR Part 430, Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards.

* * * * *

■ 34. In § 3280.715, revise paragraphs (a)(1) introductory text, (a)(5)(ii), (a)(7), and (d) to read as follows:

§ 3280.715 Circulating air systems.

(a) * * *

(1) Supply air ducts, fittings, and any dampers contained therein must be made of galvanized steel, tin-plated steel, or aluminum, or must be listed as Class 0 or Class 1 air ducts and air connectors in accordance with UL 181–2003, Factory-Made Air Ducts and Air Connectors (incorporated by reference, see § 3280.4). Class 1 air ducts and air connectors must be located at least 3 feet from the furnace bonnet or plenum. Air connectors must not be used for exterior manufactured home duct connection. A duct system integral with the structure must be of durable construction that can be demonstrated to be equally resistant to fire and deterioration as required by this section. Furnace supply plenums must be constructed of metal that extends a minimum of 3 feet from the heat exchanger measured along the centerline of airflow. Ducts constructed from sheet metal must be in accordance with the following table:

* * * * *

(5) * * *

(ii) The manufacturer must provide installation instructions for supporting, mechanically fastening, sealing, and insulating each crossover duct. The instructions must indicate that no portion of the crossover duct is to be in contact with the ground, and must describe the means to support the duct without compressing the insulation and restricting airflow.

* * * * *

(7) Unless installed in a basement, supply and return ducts, fittings, and crossover duct plenums exposed directly to outside air, such as those under-chassis crossover ducts or ducts connecting external heating, cooling, or combination heating/cooling appliances, must be insulated with material having a minimum thermal resistance of R–8 in all Thermal Zones. All such insulating materials must have a continuous vapor barrier retarder having a perm rating of not more than 1 perm. Where ducts are exposed underneath the manufactured home, they must comply with paragraph (a)(5)(ii) of this section, and shall be listed for exterior use.

* * * * *

(d) *Supports and protection.* Ducts must be securely supported. Nails or other fasteners must not be driven or penetrate through duct walls. Where vertical ducts are installed within closets or rooms, they must be enclosed with materials equivalent to those used in the closet or room construction.

* * * * *

■ 36. In § 3280.802, revise paragraphs (a)(37) and (39) to read as follows:

§ 3280.802 Definitions.

(a) * * *

(37) *Receptacle* means a contact device installed at the outlet for the connection of an attachment plug. A single receptacle is a single contact device with no other contact device on the same yoke. A multiple receptacle is a device with two or more contact devices on the same yoke.

* * * * *

(39) *Utilization equipment* means equipment that utilizes electric energy for electronic, electromechanical, chemical, heating, lighting, or similar purposes.

* * * * *

■ 37. In § 3280.803, revise paragraphs (d), (f), (i), and (k)(2) and (3) to read as follows:

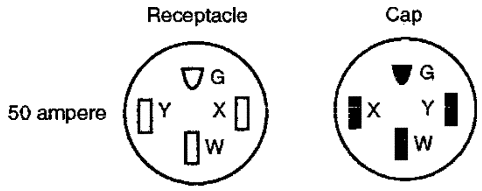
§ 3280.803 Power supply.

* * * * *

(d) A suitable clamp or the equivalent must be provided at the distribution panelboard knockout to afford strain relief for the cord to prevent strain from being transmitted to the terminals when the power supply cord is handled in its intended manner.

* * * * *

(f) The attachment plug cap must be a 3-pole, 4-wire, grounding type, rated 50 amperes, 125/250 volts, intended for use with the 50-ampere, 125/250-volt receptacle configuration, as shown below. The cap must be listed, by itself or as part of a power-supply cord assembly, for the purpose, and must be molded to or installed on the flexible cord so that it is secured tightly to the cord at the point where the cord enters the attachment plug cap. If a right-angle cap is used, the configuration must be so oriented that the grounding member is farthest from the cord.



Note: 50-ampere 125/250-volt receptacle and attachment plug cap configurations, 3-pole, 4-wire, grounding types used for manufactured home supply cords and manufactured home parks. Complete details of the 50-ampere cap and receptacle can be found *Wiring Device Dimensional Requirements* (ANSI/NEMA WD-6-1997).

Figure 1 to paragraph (f)

(i) Where the cord passes through walls or floors, it must be protected by means of conduits and bushings or the equivalent. The cord is permitted to be installed within the manufactured home walls, provided that a continuous raceway having a maximum size of 1¼ inch is installed from the branch-circuit panelboard to the underside of the manufactured home floor.

* * * * *

(k) * * *

(2) A listed metal raceway or listed rigid nonmetallic conduit from the disconnecting means in the manufactured home to the underside of the manufactured home, with provisions for the attachment of a suitable junction box or fitting to the raceway on the underside of the manufactured home. The manufacturer must provide written installation instructions stating the proper feeder conductor sizes for the raceway and the size of the junction box to be used; or

(3) Service equipment installed in or on the manufactured home, provided that all of the following conditions are met:

(i) In its written installation instructions, the manufacturer must include information indicating that the home must be secured in place by an anchoring system or installed on and secured to a permanent foundation;

(ii) The installation of the service equipment complies with Article 230 of the National Electrical Code, NFPA 70–2005 (incorporated by reference, see § 3280.4). Exterior service equipment or the enclosure in which it is to be installed must be weatherproof, and conductors must be suitable for use in wet locations;

(iii) Means are provided for the connection of the grounding electrode conductor to the service equipment and routing it to the conductor outside the structure;

(iv) Bonding and grounding of the service must be in accordance with Article 250, NFPA 70–2005, National Electrical Code (incorporated by reference, see § 3280.4);

(v) The manufacturer must include in its installation instructions one method of grounding the service equipment at the installation site. The instructions must clearly state that other methods of grounding are found in Article 250 of NFPA 70–2005, National Electrical Code;

(vi) The minimum size grounding electrode conductor must be specified in the instructions; and

(vi) A red warning label must be mounted on or adjacent to the service equipment. The label must state the following: WARNING—DO NOT PROVIDE ELECTRICAL POWER UNTIL THE GROUNDING ELECTRODE(S) IS INSTALLED AND CONNECTED (SEE INSTALLATION INSTRUCTIONS).

■ 38. In § 3280.804, revise paragraphs (a), (c), (e), and (f) to read as follows:

§ 3280.804 Disconnecting means and branch-circuit protective equipment.

(a) The branch-circuit equipment is permitted to be combined with the disconnecting means as a single assembly. Such a combination is permitted to be designated as a distribution panelboard. If a fused distribution panelboard is used, the maximum fuse size for the mains shall be plainly marked, with the lettering at least 1/4-inch high and visible when fuses are changed. See Article 110–22 of NFPA 70–2005, National Electrical Code (incorporated by reference, see § 3280.4), concerning the identification of each disconnecting means and each service, feeder, or branch circuit at the point where it originated, and the type of marking needed.

* * * * *

(c) *Disconnecting means.* A single disconnecting means must be provided in each manufactured home, consisting of a circuit breaker, or a switch and fuses and its accessories, installed in a readily accessible location near the point of entrance of the supply cord or conductors into the manufactured home. The main circuit breakers or fuses must be plainly marked ''Main.'' This equipment must contain a solderless type of grounding connector or bar for the purposes of grounding, with sufficient terminals for all grounding conductors. The neutral bar termination of the grounded circuit conductors must be insulated in accordance with § 3280.809(b).

* * * * *

(e) A distribution panelboard employing a main circuit breaker must be rated not less than 50 amperes and employ a 2-pole circuit breaker rated 40 amperes for a 40-ampere supply cord, or

50 amperes for a 50-ampere supply cord. A distribution panelboard employing a disconnect switch and fuses must be rated not less than 60 amperes and must employ a single, 2-pole fuseholder rated not less than 60-amperes with 40- or 50-ampere main fuses for 40- or 50-ampere supply cords, respectively. The outside of the distribution panelboard must be plainly marked with the fuse size.

(f) The distribution panelboard must be located in an accessible location, and must not be located in a bathroom or a clothes closet. A clear working space at least 30 inches wide and 30 inches in front of the distribution panelboard must be provided. This space must extend from the floor to the top of the distribution panelboard. Where used as switches, circuit breakers must be installed so that the center of the grip of the operating handle of the circuit breaker, when in its highest position, will not be more than 6 feet, 7 inches above the floor.

* * * * *

■ 39. In § 3280.805, add a sentence at the end of paragraph (a)(1), revise paragraphs (a)(2) and (a)(3)(i), and add paragraph (a)(3)(vi) to read as follows:

§ 3280.805 Branch circuits required.

(a) * * *

(1) * * * Lighting circuits are permitted to serve built-in gas ovens with electric service for lights, clocks, or timers, or for listed cord-connected garbage disposal units.

(2) *Small Appliances.* For the small appliance load in kitchens, pantries, dining rooms, and breakfast rooms of manufactured homes, two or more 20-ampere appliance branch circuits, in addition to the branch circuit specified in paragraph (a)(1) of this section, must be provided for all receptacle outlets in these rooms, and such circuits must have no other outlets. Countertop receptacle outlets installed in the kitchen must be supplied by not less than two small appliance branch circuits. One or more of the small appliance branch circuits may also supply other receptacle outlets in the kitchen, pantry, dining room, and breakfast room. Receptacles installed solely for the electrical supply to an electric clock and receptacles installed to provide power for supplemental equipment and lighting on gas-fired ranges, ovens, or counter-mounted cooking units are not subject to the requirements of this paragraph (a)(2).

(3) * * *

(i) The ampere rating of fixed appliances must not exceed 50 percent of the circuit rating if lighting outlets are on the same circuit (receptacles in the kitchen, dining area, and laundry are not considered to be lighting outlets);

* * * * *

(vi) Bathroom receptacle outlets must be supplied by at least one 20-ampere branch circuit. Such circuits must have no other outlets, except that it is permissible to place the receptacle outlet for a heat tape or pipe heating cable required by § 3280.806(d)(10) on a bathroom circuit. (See § 3280.806(b).)

* * * * *

■ 40. In § 3280.806, revise paragraphs (b) and (d) introductory text, redesignate paragraph (d)(10) as paragraph (d)(11), add new paragraph (d)(10) and paragraph (g) to read as follows:

§ 3280.806 Receptacle outlets.

* * * * *

(b) All 125-volt, single-phase, 15- and 20-ampere receptacle outlets installed outdoors, or in compartments accessible from outside the manufactured home, and in bathrooms, including receptacles in light fixtures, must have ground-fault circuit-interrupter protection for personnel. Ground-fault circuit-interrupter protection for personnel must be provided for receptacles serving countertops in kitchens and receptacle outlets located within 6 feet of a wet bar sink, except for receptacles installed for appliances in dedicated spaces, such as dishwashers, disposals, refrigerators, freezers, and laundry equipment.

* * * * *

(d) *Receptacle outlets required.* Except in the bath, closet, and hall areas, receptacle outlets must be installed at wall spaces 2 feet or more wide, so that no point along the floor line is more than 6 feet, measured horizontally, from an outlet in that space. Receptacle outlets in floors shall not be counted as part of the required number of receptacle outlets, unless located within 18 inches of the wall. In addition, a receptacle outlet must be installed in the following locations:

* * * * *

(10) On the underside of the home for the connection of pipe heating cable(s) or heat tape(s), and the outlet must:

(i) Be located within 2 feet of the cold water inlet;

(ii) Be connected to an interior branch circuit, other than a small appliance branch circuit;

(iii) Be located on a circuit where all of the outlets are on the load side of the ground-fault circuit-interrupter protection for personnel; and

(iv) Not be considered as the receptacle outlet required by paragraph (8) of this section.

* * * * *

(g) Receptacles must not be in a face-up position in any countertop.

■ 41. In § 3280.807, revise paragraph (c) to read as follows:

§ 3280.807 Fixtures and appliances.

* * * * *

(c) Where a lighting fixture is installed over a bathtub or in a shower stall, it must be listed for wet locations. [See also Article 410.4(D) of the National Electrical Code NFPA No. 70–2005.]

* * * * *

■ 42. In § 3280.808,

■ a. Revise paragraphs (f), (h), (i) introductory text, (i)(1), and (k);

■ b. Remove paragraph (l);

■ c. Redesignate paragraphs (m) through (r) as paragraphs (l) through (q); and

■ d. Revise newly redesignated paragraph (o)(2),

The revisions read as follows:

§ 3280.808 Wiring methods and materials.

* * * * *

(f) Where metal faceplates are used, they must be effectively grounded.

* * * * *

(h) Where rigid metal conduit or intermediate metal conduit is terminated at an enclosure with a locknut and bushing connection, two locknuts must be provided, one inside and one outside of the enclosure. Rigid nonmetallic conduit or electrical nonmetallic tubing is permitted. All cut ends of conduit and tubing must be reamed or otherwise finished to remove rough edges.

(i) Switches must be rated as follows:

(1) For lighting circuits, switches must be rated not less than 10 amperes, 120 to 125 volts, and in no case less than the connected load.

* * *

(k) When outdoor or under-chassis line-voltage (120 volts, nominal or higher) wiring is exposed to moisture or physical damage, it must be protected by rigid metal conduit or intermediate metal conduit. The conductors must be suitable for wet locations. Electrical metallic tubing or rigid nonmetallic conduit is permitted to be used when closely routed against frames and equipment enclosures.

* * * * *

(o) * * *

(2) Conductors having an insulation suitable for the temperature encountered may be run from the appliance terminal connections to a readily accessible outlet box placed at least one foot from the appliance. If provided, these conductors must be in a suitable raceway or Type AC or MC

cable, of at least 18 inches but not more than 6 feet in length.

* * * * *

■ 43. In § 3280.813, revise paragraph (b) to read as follows:

§ 3280.813 Outdoor outlets, fixtures, air-conditioning equipment, etc.

* * * * *

(b) A manufactured home provided with a branch circuit designed to energize outside heating equipment or air-conditioning equipment, other than room air conditioners, or both, located outside the manufactured home, other than room air conditioners, must have such branch-circuit conductors terminate in a listed outlet box, or disconnecting means, located on the outside of the manufactured home.

(1) A label must be permanently affixed adjacent to the outlet box. The label must be not less than 0.020-inches thick etched brass, stainless steel, anodized or alclad aluminum, or equivalent, and must not be less than 3 inches × 1¾ inches in size.

(2)(i) The label must include the correct voltage and ampere rating and the following information:

THIS CONNECTION IS FOR HEATING AND/OR AIR-CONDITIONING EQUIPMENT. THE BRANCH CIRCUIT IS RATED AT NOT MORE THAN__AMPERES, AT__VOLTS, 60–HERTZ,__CONDUCTOR AMPACITY. A DISCONNECTING MEANS IS LOCATED WITHIN SIGHT OF THE EQUIPMENT.

(ii) The correct voltage and ampere rating shall be given. The tag must be not less than 0.020-inches thick etched brass, stainless steel, anodized or alclad aluminum, or equivalent. The tag must have a minimum size of not less than 3 inches × 1¾ inches.

■ 44. In § 3280.815, revise paragraph (a) as follows:

§ 3280.815 Polarization.

(a)(1) Except as provided in paragraph (a)(2) of this section, the white conductor must be employed for the grounded (neutral) circuit conductors only and must be connected to the white terminal or lead on receptacle outlets and fixtures. The grounded conductor must be the unswitched wire in switched circuits.

(2) A cable containing an insulated conductor with a white or natural gray outer finish or a marking of three continuous white stripes may be used for single-pole, three-way, or four-way switch loops, where this conductor is used for the supply to the switch, but not as a return conductor from the switch to the switched outlet. In these applications, the conductor with white or natural gray insulation or with three continuous white stripes must be permanently re-identified to indicate its use by painting or other effective means at its terminations and at each location where the conductor is visible and accessible.

* * * * *

Dated: November 22, 2013.

Carol Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2013–28775 Filed 12–6–13; 8:45 am]

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