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Contents

Federal Register

Vol. 79, No. 71

Monday, April 14, 2014

African Development Foundation

NOTICES

Meetings:

Board of Directors, 20856

Agriculture Department

See Commodity Credit Corporation

See Natural Resources Conservation Service

See Rural Business-Cooperative Service

See Rural Utilities Service

Army Department

NOTICES

Meetings:

Advisory Committee on Arlington National Cemetery,
20866–20867

Bureau of Consumer Financial Protection

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 20865–20866

Bureau of Safety and Environmental Enforcement

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
Oil and Gas Drilling Operations, 20897–20905

Centers for Disease Control and Prevention

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 20885–20886

Meetings:

Disease, Disability, and Injury Prevention and Control
Special Emphasis Panel, 20887

Children and Families Administration

PROPOSED RULES

Runaways and Homeless Youth, 21064–21083

Coast Guard

RULES

Drawbridge Operations:

Annisquam River and Blynman Canal, Gloucester, MA,
20784–20786

Narrow Bay, Suffolk County, NY, 20786

St. Croix River, Stillwater, MN, 20784–20785

Regulated Navigation Areas:

Arthur Kill, NY and NJ, 20786–20789

Bars along the Coasts of Oregon and Washington, 20797–
20800

Safety Zones:

Bat Mitzvah Celebration Fireworks Display, Joshua Cove,
Guilford, CT, 20789–20792

Military Munitions Recovery, Raritan River, Raritan, NJ,
20792–20794

Pago Pago Harbor, American Samoa, 20794–20796

Pittsburgh Pirates Fireworks; Allegheny River Mile 0.4 to
0.6; Pittsburgh, PA, 20796–20797

Special Local Regulations:

Recurring Marine Events in the Seventh Coast Guard
District, 20783

PROPOSED RULES

Regulated Navigation Areas:

Arthur Kill, NY and NJ, 20851–20854

Special Local Regulations:

Seattle Seafair Unlimited Hydroplane Race, Lake
Washington, WA, 20841–20844

Training of Personnel and Manning on Mobile Offshore
Units and Offshore Supply Vessels Engaged in U.S.
Outer Continental Shelf Activities, 20844–20851

NOTICES

Meetings:

National Boating Safety Advisory Council, 20896–20897

Commerce Department

See National Oceanic and Atmospheric Administration

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 20864

Commodity Credit Corporation

RULES

Supplemental Agricultural Disaster Assistance Programs,
Payment Limitations, and Payment Eligibility, 21086–
21118

Defense Department

See Army Department

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Federal Acquisition Regulation; Certification of
Independent Price Determination and Parent
Company and Identifying Data, 20884–20885

Meetings:

Defense Advisory Committee on Military Personnel
Testing, 20866

Drug Enforcement Administration

NOTICES

Decisions And Orders:

Vincent G. Colosimo, D.M.D., 20911–20913

Education Department

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Annual Progress Report for the Title III Alternative
Financing Program, 20867–20868

Applications for New Awards:

Alaska Native and Native Hawaiian-Serving Institutions
Program, 20868–20880

Title V Eligibility Designation for Fiscal Year 2014;

Applications:

Promoting Postbaccalaureate Opportunities for Hispanic
Americans Program, 20880

Employment and Training Administration

NOTICES

Worker Adjustment Assistance Eligibility; Amended
Certifications:

Page 1 Solutions, LLC; Golden, CO, 20915

Rockwell Collins, Inc., et al., Irving, TX, 20915

Worker Adjustment Assistance Eligibility; Determinations, 20916–20918

Worker and Alternative Trade Adjustment Assistance Eligibility; Amended Certifications: Johnson Controls, Inc., Building Efficiency Division, et al., San Antonio, TX, 20918

Worker and Alternative Trade Adjustment Assistance Eligibility; Investigations, 20918–20919

Environmental Protection Agency

RULES

Significant New Use Rules on Certain Chemical Substances; Withdrawals, 20800–20801

PROPOSED RULES

List of Categorical Non-Waste Fuels; Additions, 21006–21033

NOTICES

Meetings:

Great Lakes Advisory Board, 20880–20881

Federal Aviation Administration

RULES

Modification of Area Navigation Routes: Q–20, Texas, 20769–20770

Special Conditions:

Embraer S.A., Model EMB–550 Airplanes; Flight Envelope Protection, Normal Load Factor (g) Limiting, 20768–20769

Stage 3 Helicopter Noise Certification Standards; Correction, 20769

PROPOSED RULES

Airworthiness Directives:

Airbus Airplanes, 20837–20841

Bombardier, Inc. Airplanes, 20829–20832

British Aerospace Regional Aircraft Airplanes, 20832–20834

Diamond Aircraft Industries GmbH Airplanes, 20827–20829

Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Airplanes, 20819–20824

The Boeing Company, 20834–20837

The Boeing Company Airplanes, 20824–20827

Special Conditions:

Embraer S.A.; Model EMB–550 Airplane; Stowage Compartment Fire Protection, 20818–20819

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Aviation Maintenance Technical Schools, 20963

Certification; Mechanics, Repairmen, and Parachute Riggers, 20965

High Density Traffic Airports; Slot Allocation and Transfer Methods, 20962–20963

Implementation to the Equal Access to Justice Act, 20963–20964

Maintenance, Preventative Maintenance, Rebuilding and Alteration, 20964

Pilots Convicted of Alcohol or Drug-Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedure, 20964–20965

Proposed Construction or Alteration, Actual Construction or Alteration and Project Status Report, 20965–20966

Requests to Release Airport Property:

Victoria Regional Airport, Victoria, TX, 20966

Federal Bureau of Investigation

NOTICES

Meetings:

National Crime Prevention and Privacy Compact Council, 20913–20914

Federal Communications Commission

PROPOSED RULES

Request for Clarification or Waiver of the Commission's Attributable Material Relationship Rule, 20854–20855

Federal Deposit Insurance Corporation

RULES

Capital Rules:

Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, etc., 20754–20761

Restrictions on Sales of Assets of a Covered Financial Company, 20762–20767

Federal Highway Administration

NOTICES

Statute of Limitations on Claims on Proposed Highway in California, 20966–20967

Federal Maritime Commission

NOTICES

Meetings; Sunshine Act, 20881

Federal Mine Safety and Health Review Commission

NOTICES

Meetings; Sunshine Act, 20881–20882

Federal Motor Carrier Safety Administration

NOTICES

Meetings:

Motor Carrier Safety Advisory Committee Compliance, Safety, Accountability Subcommittee, 20967

Federal Trade Commission

NOTICES

Early Terminations of the Waiting Period under the Premerger Notification Rules, 20882–20884

Financial Crimes Enforcement Network

NOTICES

Privacy Act; System of Records, 20969–20976

Fish and Wildlife Service

NOTICES

Permits:

Endangered Species; Marine Mammals, 20905

Food and Drug Administration

RULES

Irradiation in the Production, Processing and Handling of Food, 20771–20779

Physical Medicine Devices:

Reclassification of Stair-Climbing Wheelchairs, 20779–20783

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Adverse Event Program for Medical Devices (Medical Product Safety Network), 20887–20888

Meetings:

Circulatory System Devices Panel, Medical Devices Advisory Committee, 20888–20889

Ophthalmic Devices Panel of the Medical Devices Advisory Committee, 20889–20890

General Services Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulation; Certification of Independent Price Determination and Parent Company and Identifying Data, 20884–20885

Health and Human Services Department

See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

RULES

Official Symbol, Logo and Seal, 20801–20802

NOTICES

Meetings:
National Biodefense Science Board, 20885

Health Resources and Services Administration**NOTICES**

Meetings:
National Advisory Council on the National Health Service Corps, 20890
National Health Service Corps Scholarship Program:
Recruitment of Sites for Assignment of Corps Personnel, 20890–20893

Homeland Security Department

See Coast Guard

Interior Department

See Bureau of Safety and Environmental Enforcement
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20976–20978
Requests for Nominations:
Internal Revenue Service Advisory Council, 20978–20979

International Trade Commission**NOTICES**

Complaints:
Certain Navigation Products Including GPS Devices, Navigation and Display Systems, Radar Systems, Navigational Aids, etc., 20907
Investigations; Terminations, Modifications and Rulings, etc.:
Certain Sulfentrazone, Sulfentrazone Compositions, And Processes For Making Sulfentrazone, 20907–20908
Computer Forensic Devices and Products Containing Same, 20908–20910

Judicial Conference of the United States**NOTICES**

Meetings:
Judicial Conference Committee on Rules of Practice and Procedure, 20910

Justice Department

See Drug Enforcement Administration
See Federal Bureau of Investigation

NOTICES

Proposed Settlements under CERCLA, etc., 20910–20911

Labor Department

See Employment and Training Administration
See Labor Statistics Bureau
See Occupational Safety and Health Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Radiation Sampling and Exposure Records, 20914–20915

Labor Statistics Bureau**NOTICES**

Requests for Nominations:
Data Users Advisory Committee, 20919–20920

Land Management Bureau**NOTICES**

Public Land Withdrawals:
San Bernardino, CA, 20905–20907

Mine Safety and Health Federal Review Commission

See Federal Mine Safety and Health Review Commission

Morris K. and Stewart L. Udall Foundation**NOTICES**

Meetings; Sunshine Act, 20922

National Aeronautics and Space Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulation; Certification of Independent Price Determination and Parent Company and Identifying Data, 20884–20885

National Highway Traffic Safety Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20967–20969

National Institutes of Health**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Loan Repayment Programs, 20893–20894
Meetings:
Eunice Kennedy Shriver National Institute of Child Health and Human Development; Amendments, 20896
National Institute of Mental Health, 20894
National Institute on Drug Abuse, 20894–20896

National Oceanic and Atmospheric Administration**RULES**

Endangered and Threatened Wildlife and Plants:
Species Under the Jurisdiction of the National Marine Fisheries Service, 20802–20817

PROPOSED RULES

Gulf of the Farallones and Cordell Bank National Marine Sanctuaries, 20982–21003

NOTICES

Meetings:
Mid-Atlantic Fishery Management Council, 20864–20865
Permits:
Marine Mammals; File No. 16591, 20865

National Science Foundation**NOTICES**

Meetings; Sunshine Act, 20922

National Transportation Safety Board**NOTICES**

Meetings:

Rail Safety; Transportation of Crude Oil and Ethanol,
20922–20923

Natural Resources Conservation Service**NOTICES**

Meetings:

Agricultural Air Quality Task Force, 20856

Nuclear Regulatory Commission**RULES**

List of Approved Spent Fuel Storage Casks:

HI–STORM 100 Cask System; Amendment No. 9;
Correction, 20753–20754

PROPOSED RULES

Fee Schedules:

Fee Recovery for Fiscal Year 2014; Revision, 21036–
21061

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 20923–20924

Meetings; Sunshine Act, 20924–20925

Occupational Safety and Health Administration**NOTICES**

Expansion of Recognition Applications:

Underwriters Laboratories Inc., 20920–20922

Peace Corps**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 20925–20927

Personnel Management Office**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Civil Service Retirement System, 20928

Federal Employees Health Benefits Open Season Express
Interactive Voice Response System and Open Season
Website, 20927

Excepted Service, 20928–20930

Privacy Act; Systems of Records, 20931

Postal Regulatory Commission**NOTICES**

New Postal Products, 20931

Postal Contract Amendments, 20931–20933

Rural Business–Cooperative Service**NOTICES**

Funding Availabilities:

Delta Health Care and Delta Regional Authority Grant
Program, 20857–20863

Rural Utilities Service**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 20863–20864

Securities and Exchange Commission**NOTICES**

Applications:

ALPS ETF Trust, et al., 20933–20942

Professionally Managed Portfolios and Balter Liquid
Alternatives, LLC, 20942–20945

Self-Regulatory Organizations; Proposed Rule Changes:

Chicago Board Options Exchange, Inc., 20945–20946

NASDAQ OMX BX, Inc., 20951–20953

NASDAQ OMX PHLX LLC, 20949–20951, 20955–20957

NASDAQ Stock Market, LLC, 20946–20949

New York Stock Exchange, LLC, 20953–20955

NYSE MKT LLC, 20957–20959

Trading Suspension Orders:

GrowLife, Inc., 20959

Selective Service System**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 20959

State Department**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Refugee Biographic Data, 20959–20960

Culturally Significant Objects Imported for Exhibition:

Expressionism in Germany and France—From Van Gogh
to Kandinsky, 20960–20961

Gods and Heroes: Masterpieces from the Ecole des Beaux-
Arts, Paris, 20960

Traveling the Silk Road: Ancient Pathway to the Modern
World, 20961

Susquehanna River Basin Commission**NOTICES**

Public Hearings, 20961–20962

Transportation Department

See Federal Aviation Administration

See Federal Highway Administration

See Federal Motor Carrier Safety Administration

See National Highway Traffic Safety Administration

Treasury Department

See Financial Crimes Enforcement Network

See Internal Revenue Service

Separate Parts In This Issue**Part II**

Commerce Department, National Oceanic and Atmospheric
Administration, 20982–21003

Part III

Environmental Protection Agency, 21006–21033

Part IV

Nuclear Regulatory Commission, 21036–21061

Part V

Health and Human Services Department, Children and
Families Administration, 21064–21083

Part VI

Agriculture Department, Commodity Credit Corporation,
21086–21118

Reader Aids

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

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settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR		12.....20844
1400.....	21086	13.....20844
1416.....	21086	14.....20844
10 CFR		15.....20844
72.....	20753	47 CFR
Proposed Rules:		Proposed Rules:
170 036		1.....20854
171.....	21036	50 CFR
12 CFR		223.....20802
303.....	20754	224.....20802
308.....	20754	
324.....	20754	
327.....	20754	
333.....	20754	
337.....	20754	
347.....	20754	
349.....	20754	
360.....	20754	
362.....	20754	
363.....	20754	
364.....	20754	
365.....	20754	
380.....	20762	
390.....	20754	
391.....	20754	
14 CFR		
25.....	20768	
36.....	20769	
71.....	20769	
Proposed Rules:		
25.....	20818	
39 (8 documents).....	20819,	
20824, 20827, 20829, 20832,	20834, 20837, 20839	
15 CFR		
Proposed Rules:		
922.....	20982	
21 CFR		
179.....	20771	
890.....	20779	
33 CFR		
100.....	20783	
117 (4 documents).....	20784,	
20785, 20786		
165 (5 documents).....	20786,	
20789, 20792, 20794, 20796		
177.....	20797	
Proposed Rules:		
100.....	20841	
140.....	20844	
141.....	20844	
142.....	20844	
143.....	20844	
144.....	20844	
145.....	20844	
146.....	20844	
147.....	20844	
165.....	20851	
40 CFR		
9.....	20800	
721.....	20800	
Proposed Rules:		
241.....	21006	
45 CFR		
18.....	20801	
Proposed Rules:		
1351.....	21064	
46 CFR		
Proposed Rules:		
10.....	20844	
11.....	20844	

Rules and Regulations

Federal Register

Vol. 79, No. 71

Monday, April 14, 2014

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

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2012–0052]

RIN 3150–AJ12

List of Approved Spent Fuel Storage Casks: HI–STORM 100 Cask System; Amendment No. 9; Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correcting amendment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) published a document in the *Federal Register* (FR) on December 26, 2013, which corrected and delayed the effective date of a direct final rule published in the FR on December 6, 2013. The notice corrected several Agencywide Documents Access and Management System (ADAMS) accession numbers and delayed the effective date of the direct final rule from February 19, 2014, to March 11, 2014. The direct final rule amends the NRC's spent fuel storage regulations by revising the Holtec International HI–STORM 100 Cask System listing within the “List of Approved Spent Fuel Storage Casks” to include Amendment No. 9 to Certificate of Compliance (CoC) No. 1014. This action is necessary to provide notification that the NRC is amending its regulations by revising the Holtec HI–STORM 100 Cask System listing within the “List of Approved Spent Fuel Storage Casks” to correct the effective date of Amendment No. 9 to CoC No. 1014.

DATES: This rule is effective on April 14, 2014.

ADDRESSES: Please refer to Docket ID NRC–2012–0052 when contacting the NRC about the availability of information for this action. You may access publicly-available information

related to this action by any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC–2012–0052. Address questions about NRC dockets to Carol Gallagher, telephone: 301–287–3422, email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's 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.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Naiem S. Taniou, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6103, email: Naiem.Taniou@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC published a direct final rule in the *Federal Register* on December 6, 2013 (78 FR 73379), and companion proposed rule (78 FR 73456) which revised the Holtec International HI–STORM 100 Cask System listing within the “List of Approved Spent Fuel Storage Casks” to include Amendment No. 9 to CoC No. 1014. The direct final rule was to become effective February 19, 2014, unless significant adverse comments on the proposed rule were received by January 6, 2014. Subsequently, on December 26, 2013, the NRC published a correction to the direct final rule delaying the effective date to March 11, 2014 (78 FR 78165), and a correction to the companion proposed rule (78 FR 78285) extending the comment period to January 27, 2014. The December 26, 2013, correction was necessary to correct ADAMS accession

numbers listed in the December 6, 2013, direct final and proposed rules.

The December 26, 2013, document omitted the revised effective date of Amendment No. 9 of CoC No. 1014. This document corrects the effective date to March 11, 2014.

II. Rulemaking Procedure

Because this amendment corrects an effective date of a direct final rule that was already noticed in the FR, the Commission finds that the notice and comment provisions of the Administrative Procedure Act are unnecessary and is exercising its authority under 5 U.S.C. 553(b)(3)(B) to publish this amendment as a final rule. This amendment does not require action by any person or entity regulated by the NRC. Also, the final rule does not change the substantive responsibilities of any person or entity regulated by the NRC.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, 10 CFR part 72 is corrected by making the following correcting amendment.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282, 2021); Energy Reorganization Act sec. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Protection Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141, 148 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168);

Government Paperwork Elimination Act sec. 1704, (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 788 (2005).

Section 72.44(g) also issued under Nuclear Waste Policy Act secs. 142(b) and 148(c)–(d) (42 U.S.C. 10162(b), 10168(c)–(d)). Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)). Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)). Subpart K also issued under Nuclear Waste Policy Act sec. 218(a) (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: May 31, 2000.

Amendment Number 1 Effective Date: July 15, 2002.

Amendment Number 2 Effective Date: June 7, 2005.

Amendment Number 3 Effective Date: May 29, 2007.

Amendment Number 4 Effective Date: January 8, 2008.

Amendment Number 5 Effective Date: July 14, 2008.

Amendment Number 6 Effective Date: August 17, 2009.

Amendment Number 7 Effective Date: December 28, 2009.

Amendment Number 8 Effective Date: May 2, 2012, as corrected on November 16, 2012 (ADAMS Accession No. ML12213A170).

Amendment Number 9 Effective Date: March 11, 2014.

SAR Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI–STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: May 31, 2020.

Model Number: HI–STORM 100.

* * * * *

Dated at Rockville, Maryland, this 8th day of April, 2014.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 308, 324, 327, 333, 337, 347, 349, 360, 362, 363, 364, 365, 390, and 391

RIN 3064–AD95

Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-Weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is adopting as final an interim final rule that revised the risk-based and leverage capital requirements for FDIC-supervised institutions, with no substantive changes. This final rule is substantively identical to a joint final rule issued by the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Federal Reserve) (together, with the FDIC, the agencies). The interim final rule became effective on January 1, 2014; however, the mandatory compliance date for FDIC-supervised institutions that are not subject to the advanced internal ratings-based approaches (advanced approaches) is January 1, 2015.

DATES: *Effective date:* April 14, 2014. *Mandatory compliance date:* January 1, 2014 for advanced approaches FDIC-supervised institutions; January 1, 2015 for all other FDIC-supervised institutions.

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SUPPLEMENTARY INFORMATION:

I. Introduction

On August 30, 2012, the agencies published in the **Federal Register** three joint notices of proposed rulemaking seeking public comment on revisions to their risk-based and leverage capital requirements and the methodologies for calculating risk-weighted assets under the standardized and advanced approaches (each, a proposal, and together, the notices of proposed rulemaking (NPRs), the proposed rules, or the proposals).¹ The proposed rules, in part, reflected revisions to international capital standards adopted by the Basel Committee on Banking Supervision (BCBS) and described in, *Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems* (Basel III), as well as subsequent changes to the Basel III framework and recent BCBS consultative papers.² The proposals also included certain provisions that are required under, or maintain consistency with, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act).³ After considering the public comments received on the NPRs, on September 10, 2013, the FDIC issued the three proposals as a consolidated interim final rule (Basel III interim final rule).⁴

Concurrent with the adoption of the Basel III interim final rule, the agencies issued a related joint notice of proposed rulemaking that would adopt enhanced supplementary leverage ratio standards for large, interconnected U.S. banking organizations and their insured depository institution subsidiaries (enhanced supplementary leverage ratio NPR).⁵ The Basel III interim final rule sought comments on the interaction between the Basel III interim final rule

¹ 77 FR 52792 (August 30, 2012); 77 FR 52888 (August 30, 2012); 77 FR 52978 (August 30, 2012).

² Basel III was published in December 2010 and revised in June 2011. The text is available at <http://www.bis.org/publ/bcbs189.htm>. The BCBS is a committee of banking supervisory authorities, which was established by the central bank governors of the G–10 countries in 1975. More information regarding the BCBS and its membership is available at <http://www.bis.org/bcbs/about.htm>. Documents issued by the BCBS are available through the Bank for International Settlements Web site at <http://www.bis.org>.

³ Public Law 111–203, 124 Stat. 1376, 1435–38 (2010).

⁴ 78 FR 55340 (Sept. 10, 2013). The OCC and the Federal Reserve issued the three proposals as a consolidated final rule that was substantively identical to the FDIC's Basel III interim final rule (78 FR 62018 (Oct. 11, 2013)).

⁵ 78 FR 51101 (Aug. 20, 2013).

and the enhanced supplementary leverage ratio standards NPR. The FDIC is now issuing as final its Basel III interim final rule with no substantive changes.

II. Summary of the Comments and the Final Rule

A. Comments

In response to the Basel III interim final rule, the FDIC received three public comments from two banking organizations and one trade association representing the financial services industry. This section of the preamble provides a discussion of the comment letters and the FDIC's response to them.

One commenter encouraged the FDIC to seek public comment earlier in the development process of new international capital standards. Specifically, the commenter stated that while developing international capital standards among the BCBS members the FDIC should issue an advance notice of proposed rulemaking describing prospective revisions to those standards so that U.S. banking organizations can more fully understand the implications for the U.S. banking sector and the U.S. economy as a whole. The commenter also recommended conducting an empirical study of the impact on the U.S. banking system, bank customers in particular, and the economy in general, resulting from the U.S. implementation of any international capital standards adopted by the BCBS. The FDIC notes that the BCBS seeks public comment, including from U.S. banking organizations, in connection with its development of international capital standards. As members of the BCBS the agencies are actively engaged in this process, which also includes quantitative impact analyses to assess the impact of proposed capital standards.

Another commenter requested that the FDIC revise the credit conversion factors (CCFs) for trade related, self-liquidating financing for on-balance sheet exposures for up to one year, provided that the banking organization has proper documentation to substantiate the transaction. This commenter also requested that the FDIC use the same country risk classification ratings (CRC) as the OECD without any further downgrades for exposures to foreign banking organizations. For the reasons stated in the Basel III interim final rule, the final rule adopts the CCFs and CRC methodology set forth in the interim final rule without any substantive change.⁶

The commenter also encouraged the FDIC to reconsider several of the issues raised by commenters responding to the three proposals issued in 2012. For example, the commenter requested that the FDIC reconsider the treatment under the Basel III interim final rule for capital instruments issued by banking organizations that are organized as S-corporations; the limitation on the amount of mortgage servicing assets that may be included in common equity tier 1 capital; the deduction of collateralized debt obligations supported by trust preferred securities; the inclusion of accumulated other comprehensive income (AOCI) in common equity tier 1 capital; and the 150 percent risk weight for certain delinquent exposures. For the reasons stated in the Basel III interim final rule, the final rule adopts these provisions without substantive change.⁷

Another commenter requested that the FDIC reconsider whether to recognize financial guarantee insurers as guarantors under the definition of "eligible guarantor" set forth in the Basel III interim final rule. The commenter stated that such an exclusion fails to recognize the risk mitigating benefits that may be associated with financial guarantee insurance. The FDIC believes that guarantees issued by these types of entities can exhibit wrong-way risk and that modifying the definition of eligible guarantor to accommodate these entities or entities that are not investment grade would be contrary to one of the key objectives of the capital framework, which is to mitigate interconnectedness and systemic vulnerabilities within the financial system. Therefore, the FDIC is finalizing the definition of "eligible guarantor" with no change.

B. The Final Rule⁸

The FDIC is adopting the Basel III interim final rule as a final rule with no substantive changes. The only changes in this final rule are technical revisions to conform it to the final rules issued by the Federal Reserve and the OCC. For example, the final rule uses the correct compliance date, January 1, 2015, in section 324.63(a) rather than January 1, 2014 as used in the Basel III interim final rule. Also, several sections of the final rule have been clarified to read, "this paragraph (x)", instead of "this paragraph," to match internal references

in the final rule adopted by the Federal Reserve and the OCC.

Consistent with the Basel III interim final rule, the final rule is intended to improve both the quality and quantity of FDIC-supervised institutions' capital.⁹ The final rule implements a revised definition of regulatory capital, a new common equity tier 1 minimum capital requirement, a higher minimum tier 1 capital requirement, and, for FDIC-supervised institutions subject to the advanced approaches, a supplementary leverage ratio that incorporates a broader set of exposures in the denominator measure (that is, total leverage exposure).¹⁰ The final rule incorporates these new requirements into the FDIC's prompt corrective action (PCA) framework. In addition, the final rule establishes limits on an FDIC-supervised institution's capital distributions and certain discretionary bonus payments if the institution does not hold a specified amount of common equity tier 1 capital in addition to the amount necessary to meet its minimum risk-based capital requirements. The final rule amends the methodologies for determining risk-weighted assets for all FDIC-supervised institutions, and adopts changes to the FDIC's regulatory capital requirements that meet the requirements of and are consistent with section 171 and section 939A of the Dodd-Frank Act.¹¹ In addition, the FDIC notes that while portions of the final rule refer to circumstances where a party becomes subject to receivership, the final rule is intended to govern matters relating to capital requirements and should not be construed as an indication of FDIC receivership rules or policies.

The final rule codifies the FDIC's regulatory capital rules, which have previously resided in various appendices to their respective regulations, into a harmonized integrated regulatory framework. In addition, the final rule amends the

⁹ FDIC-supervised institutions include state nonmember banks and state savings associations. The term banking organizations includes national banks, state member banks, state nonmember banks, state and Federal savings associations, and top-tier bank holding companies domiciled in the United States not subject to the Federal Reserve's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C)), as well as top-tier savings and loan holding companies domiciled in the United States, except certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities.

¹⁰ The supplementary leverage ratio is defined as the simple arithmetic mean of the ratio of the banking organization's tier 1 capital to total leverage exposure calculated as of the last day of each month in the reporting quarter.

¹¹ Public Law 111-203, 124 Stat. 1376, 1435-38 (2010).

⁷ 78 FR 55354 (S-corporations), 78 FR 55388 (MSAs), 78 FR 55386 (TruPs), 78 FR 55346 (AOCI); and 78 FR 55407-55408 (delinquent exposures).

⁸ For a section-by-section summary of the final rule see 78 FR 55340 (Sept. 10, 2013).

⁶ 78 FR 55402-55403.

market risk capital rule (market risk rule) to apply to state savings associations.

III. Regulatory Flexibility Act

In general, section 4 of the Regulatory Flexibility Act (5 U.S.C. 604) (RFA) requires an agency to prepare a final regulatory flexibility analysis (FRFA) for a final rule unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banking entities with total assets of \$500 million or less). Pursuant to the RFA, the agency must make the FRFA available to members of the public and must publish the FRFA, or a summary thereof, in the **Federal Register**. The FDIC published a summary of its FRFA in the **Federal Register** with the Basel III interim final rule.¹² The FDIC did not receive comments on the FRFA provided in the interim final rule. As such, and consistent with the FRFA in the Basel III interim final rule, the FDIC is publishing the following summary of its FRFA.¹³

For purposes of the FRFA, the FDIC analyzed the potential economic impact of the final rule on FDIC-supervised institutions with total assets of \$500 million or less (small FDIC-supervised institutions).

As discussed in more detail below, the FDIC believes that this final rule may have a significant economic impact on a substantial number of the small entities under its jurisdiction.

A. Statement of the Need for, and Objectives of, the Final Rule

As discussed in the Supplementary Information section of the preamble to this final rule, the FDIC is revising its regulatory capital requirements to promote safe and sound banking practices, implement Basel III and other aspects of the Basel capital framework, harmonize capital requirements

between types of FDIC-supervised institutions, and codify capital requirements.

Additionally, this final rule is consistent with certain requirements under the Dodd-Frank Act by: (1) Revising regulatory capital requirements to remove references to, and requirements of reliance on, credit ratings,¹⁴ and (2) imposing new or revised minimum capital requirements on certain FDIC-supervised institutions.¹⁵

Under section 38(c)(1) of the Federal Deposit Insurance Act, the FDIC may prescribe capital standards for depository institutions that it regulates.¹⁶ The FDIC also must establish capital requirements under the International Lending Supervision Act for institutions that it regulates.¹⁷

B. Description and Estimate of Small FDIC-Supervised Institutions Affected by the Final Rule

Under regulations issued by the Small Business Administration,¹⁸ a small entity includes a depository institution with total assets of \$500 million or less. As of December 31, 2013, the FDIC supervised approximately 3,394 small state nonmember banks and 303 small state savings associations.

C. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The final rule may impact small FDIC-supervised institutions in several ways. The final rule affects small FDIC-supervised institutions' regulatory capital requirements by changing the qualifying criteria for regulatory capital, including required deductions and adjustments, and modifying the risk-weight treatment for some exposures. The final rule also requires small FDIC-supervised institutions to meet a new minimum common equity tier 1 capital to risk-weighted assets ratio of 4.5 percent and an increased minimum tier 1 capital to risk-weighted assets ratio of 6 percent. Under the final rule, all FDIC-supervised institutions would remain subject to a 4 percent minimum tier 1 leverage ratio requirement.¹⁹ The final rule imposes limitations on capital distributions and discretionary bonus

payments for small FDIC-supervised institutions that do not hold a minimum buffer of common equity tier 1 capital above the minimum ratios.

The final rule also includes changes to the general risk-based capital requirements that address the calculation of risk-weighted assets. Specifically, the final rule:

- Introduces a higher risk weight for certain past due exposures and acquisition, development, and construction real estate loans;
- Provides a more risk sensitive approach to exposures to non-U.S. sovereigns and non-U.S. public sector entities;
- Replaces references to credit ratings with new measures of creditworthiness;²⁰
- Provides more comprehensive recognition of collateral and guarantees; and
- Provides a more favorable capital treatment for transactions cleared through qualifying central counterparties.

As a result of the new requirements, some small FDIC-supervised institutions may have to alter their capital structure (including by raising new capital or increasing retention of earnings) in order to achieve compliance.

The FDIC has excluded from its analysis any burden associated with changes to the Consolidated Reports of Income and Condition for small FDIC-supervised institutions (FFIEC 031 and 041; OMB Nos. 7100-0036, 3064-0052, 1557-0081). Through the FFIEC, the FDIC and the other federal banking agencies published information collection changes in the regulatory reporting requirements to reflect the requirements of the final rule separately that include associated estimates of burden.²¹ The FDIC, and the other federal banking agencies, also expects to publish additional information collection changes in the regulatory reporting requirements for risk-weighted assets in the immediate future. Further analysis of the projected reporting requirements imposed by the final rule is located in the Paperwork Reduction Act section, below.

Most small FDIC-supervised institutions hold capital in excess of the minimum leverage and risk-based capital requirements set forth in the final rule. Although the capital requirements under the final rule are

¹² 78 FR 55465-55468.

¹³ The FDIC published a summary of its initial regulatory flexibility analysis (IRFA) in connection with each of the proposed rules in accordance with Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA). In the IRFAs provided in connection with the proposed rules, the FDIC requested comment on all aspects of the IRFAs, and, in particular, on any significant alternatives to the proposed rules applicable to covered small FDIC-supervised institutions that would minimize their impact on those entities. In the IRFA provided by the FDIC in connection with the proposal to revise the advanced approaches (77 FR 52978 (August 30, 2012)), the FDIC determined that there would not be a significant economic impact on a substantial number of small FDIC-supervised institutions and published a certification and a short explanatory statement pursuant to section 605(b) of the RFA.

¹⁴ See 15 U.S.C. 780-7, note.

¹⁵ See 12 U.S.C. 5371.

¹⁶ See 12 U.S.C. 1831o(c).

¹⁷ See 12 U.S.C. 3907.

¹⁸ See 13 CFR 121.201.

¹⁹ Beginning on January 1, 2018, advanced approaches FDIC-supervised institutions also would be required to satisfy a minimum tier 1 capital to total leverage exposure ratio requirement (the supplementary leverage ratio) of 3 percent. Advanced approaches FDIC-supervised institutions should refer to section 10 of subpart B of the final rule.

²⁰ Section 939A of the Dodd-Frank Act addresses the use of credit ratings in Federal regulations. Accordingly, the final rule introduces alternative measures of creditworthiness for foreign debt, securitization positions, and resecuritization positions.

²¹ 79 FR 2527-2535 (Jan. 14, 2014).

not expected to significantly impact the capital structure of these institutions, the FDIC expects that some may change internal capital allocation policies and practices to accommodate the requirements of the final rule. For example, an institution may elect to raise capital to return its excess capital position to the levels maintained prior to implementation of the final rule.

A comparison of the capital requirements in the final rule on a fully-implemented basis to the minimum requirements under the general risk-based capital rules shows that approximately 74 small FDIC-supervised institutions with total assets of \$500 million or less currently do not hold sufficient capital to satisfy the requirements of the final rule. Those institutions, which represent approximately three percent of small FDIC-supervised institutions, collectively would need to raise approximately \$233 million in regulatory capital to meet the minimum capital requirements under the final rule.

To estimate the cost to small FDIC-supervised institutions of the new capital requirement, the FDIC examined the effect of this requirement on capital structure and the overall cost of capital.²² The cost of financing a small FDIC-supervised institution is the weighted average cost of its various financing sources, which amounts to a weighted average cost of capital reflecting many different types of debt and equity financing. Because interest payments on debt are tax deductible, a more leveraged capital structure reduces corporate taxes, thereby lowering funding costs, and the weighted average cost of financing tends to decline as leverage increases. Thus, an increase in required equity capital would—all else equal—increase the cost of capital for that institution. This effect could be offset to some extent if the additional capital protection caused the risk premium demanded by the institution's counterparties to decline sufficiently. The FDIC did not try to measure this effect. This increased cost in the most burdensome year would be tax benefits foregone: The capital requirement, multiplied by the interest rate on the debt displaced and by the effective marginal tax rate for the small FDIC-supervised institutions affected by the final rule. The effective marginal corporate tax rate is affected not only by the statutory Federal and state rates, but also by the probability of positive

earnings and the offsetting effects of personal taxes on required bond yields. Graham (2000) considers these factors and estimates a median marginal tax benefit of \$9.40 per \$100 of interest.²³ So, using an estimated interest rate on debt of 6 percent, the FDIC estimated that for institutions with total assets of \$500 million or less, the annual tax benefits foregone on \$233 million of capital switching from debt to equity is approximately \$1.3 million per year ($\$233 \text{ million} * 0.06 \text{ (interest rate)} * 0.094 \text{ (median marginal tax savings)}$). Averaged across 74 institutions, the cost is approximately \$18,000 per institution per year.

Working with the other agencies, the FDIC also estimated the direct compliance costs related to financial reporting as a result of the final rule. This aspect of the final rule likely will require additional personnel training and expenses related to new systems (or modification of existing systems) for calculating regulatory capital ratios, in addition to updating risk weights for certain exposures. The FDIC assumes that small FDIC-supervised institutions will spend approximately \$43,000 per institution to update reporting system and change the classification of existing exposures. Based on comments from the industry, the FDIC increased this estimate from the \$36,125 estimate used in the proposed rules. The FDIC believes that this revised cost estimate is more conservative because it has increased even though many of the labor-intensive provisions proposed in the NPRs have been excluded from the final rule. For example, small FDIC-supervised institutions have the option to maintain the current reporting methodology for gains and losses classified as Available for Sale (AFS) thus eliminating the need to update systems. Additionally, the exposures for which the risk weights are changing typically represent a small portion of assets (less than 5 percent) on institutions' balance sheets. Additionally, small FDIC-supervised institutions can maintain existing risk weights for residential mortgage exposures, eliminating the need for those institutions to reclassify existing mortgage exposures. The FDIC estimates that the \$43,000 in direct compliance costs will represent a burden for approximately 34 percent of small FDIC-supervised institutions with total assets of \$500 million or less. For purposes of

this FRFA, the FDIC defines significant burden as an estimated cost greater than 2.5 percent of total non-interest expense or 5 percent of annual salaries and employee benefits. The direct compliance costs are the most significant cost since few small FDIC-supervised institutions will need to raise capital to meet the minimum ratios, as noted above.

D. Steps Taken To Minimize the Economic Impact on Small FDIC-Supervised Institutions; Significant Alternatives

As discussed in the Basel III interim final rule, the FDIC made several significant revisions to the proposals in response to public comments. For example, under the final rule, non-advanced approaches FDIC-supervised institutions will be permitted to elect to exclude amounts reported as AOCI when calculating regulatory capital, to the same extent currently permitted under the general risk-based capital rules.²⁴ In addition, for purposes of calculating risk-weighted assets under the standardized approach, the FDIC is not adopting the proposed treatment for 1–4 family residential mortgages, which would have required small FDIC-supervised institutions to categorize residential mortgage loans into one of two categories based on certain underwriting standards and product features, and then risk weight each loan based on its loan-to-value ratio. The FDIC also is retaining the 120-day safe harbor from recourse treatment for loans transferred pursuant to an early default provision. The FDIC believes that these changes will meaningfully reduce the compliance burden of the final rule for small FDIC-supervised institutions. For instance, in contrast to the proposal, the final rule does not require small FDIC-supervised institutions to review existing mortgage loan files, purchase new software to track loan-to-value ratios, train employees on the new risk-weight methodology, or hold more capital for exposures that would have been deemed category 2 under the proposed rule. Similarly, the option to elect to retain the current treatment of AOCI will reduce the burden associated with managing the volatility in regulatory capital resulting from changes in the value of a small FDIC-supervised institutions' AFS debt securities portfolio due to shifting interest rate environments. The FDIC

²³ See John R. Graham, (2000), *How Big Are the Tax Benefits of Debt?*, *Journal of Finance*, Vol. 55, No. 5, pp. 1901–1941. Graham points out that ignoring the offsetting effects of personal taxes would increase the median marginal tax rate to \$31.5 per \$100 of interest.

²⁴ For most non-advanced approaches FDIC-supervised institutions, this will be a one-time only election. However, in certain limited circumstances, such as a merger of organizations that have made different elections, the FDIC may permit the resultant entity to make a new election.

²² See Merton H. Miller, (1995), "Do the M & M Propositions Apply to Banks?" *Journal of Banking & Finance*, Vol. 19, pp. 483–489.

believes these modifications substantially reduce compliance burden for small FDIC-supervised institutions.

IV. Paperwork Reduction Act

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

In conjunction with the proposed rules, the FDIC submitted the information collection requirements contained therein to OMB for review. In response, OMB filed comments with the FDIC in accordance with 5 CFR 1320.11(c) withholding PRA approval and instructing that the collection should be resubmitted to OMB at the final rule stage. As instructed by OMB, the information collection requirements contained in this final rule were submitted by the FDIC to OMB for review in connection with the adoption of the Basel III interim final rule under the PRA, under OMB Control No. 3064–0153. On January 24, 2014, OMB approved the FDIC’s information collection request for a six-month period under emergency clearance procedures.

The final rule contains the same information collection requirements subject to the PRA that were included in the Basel III interim final rule. They are found in sections 324.3, 324.22, 324.35, 324.37, 324.41, 324.42, 324.62, 324.63 (including tables), 324.121, through 324.124, 324.132, 324.141, 324.142, 324.153, 324.173 (including tables). Therefore, the FDIC will submit another information collection request for extension without change of the currently approved collection for the typical three-year period.

The information collection requirements contained in sections 324.203, through 324.210, and 324.212 concerning market risk are approved by OMB under Control No. 3604–0178.

V. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the final rule in a simple and straightforward manner and did not receive any comments on the use of plain language.

VI. Small Business Regulatory Enforcement Fairness Act of 1996

For purposes of the Small Business Regulatory Enforcement Fairness Act of

1996, or “SBREFA,” the FDIC must advise the OMB as to whether the final rule constitutes a “major” rule.²⁵ If a rule is major, its effectiveness will generally be delayed for 60 days pending congressional review.

In accordance with SBREFA, the FDIC has advised the OMB that this final rule is a major rule for the purpose of congressional review. Following OMB’s review, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the final rule may be reviewed.

List of Subjects in 12 CFR Part 324

Administrative practice and procedure, Banks, banking, Capital Adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

Authority and Issuance

For the reasons set forth in the preamble, the interim rule amending chapter III of title 12 of the Code of Federal Regulations, which was published at 78 FR 55340 on September 10, 2013, is adopted as a final rule with the following changes:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 1. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

■ 2. Revise paragraph (6) of the definition of “financial institution”, paragraph (2)(i) of the definition of “high volatility commercial real estate”, and paragraph (1) of the definition of “netting set” in § 324.2 to read as follows:

§ 324.2 Definitions.

* * * * *

Financial institution means: * * *

(6) Any other company that the FDIC may determine is a financial institution based on activities similar in scope, nature, or operation to those of the entities included in paragraphs (1) through (4) of this definition.

* * * * *

High volatility commercial real estate (HVCRE) exposure means: * * *

(2) * * *

(i) Would qualify as an investment in community development under 12 U.S.C. 338a or 12 U.S.C. 24 (Eleventh), as applicable, or as a “qualified investment” under 12 CFR part 345, and

* * * * *

Netting set means: * * *

(1) That is not subject to such a master netting agreement; or

* * * * *

■ 3. Revise the introductory text of paragraph (a) in § 324.3 to read as follows:

§ 324.3 Operational requirements for counterparty credit risk.

* * * * *

(a) Cleared transaction. In order to recognize certain exposures as cleared transactions pursuant to paragraphs (1)(ii), (iii), or (iv) of the definition of “cleared transaction” in § 324.2, the exposures must meet the applicable requirements set forth in this paragraph (a).

* * * * *

■ 4. Revise paragraph (b)(4) in § 324.10 to read as follows:

§ 324.10 Minimum capital requirements.

* * * * *

(b) * * *

(4) Leverage ratio. An FDIC-supervised institution’s leverage ratio is the ratio of the FDIC-supervised institution’s tier 1 capital to the FDIC-supervised institution’s average total consolidated assets as reported on the FDIC-supervised institution’s Call Report minus amounts deducted from tier 1 capital under § 324.22(a), (c), and (d).

* * * * *

■ 5. Revise paragraph (b)(1)(iv)(C) in § 324.11 to read as follows:

§ 324.11 Capital conservation buffer and countercyclical capital buffer amount.

* * * * *

(b) * * *

(1) * * *

(iv) * * *

(C) The location of a securitization exposure is the location of the underlying exposures, or, if the underlying exposures are located in more than one national jurisdiction, the national jurisdiction where the underlying exposures with the largest aggregate unpaid principal balance are located. For purposes of this paragraph (b), the location of an underlying exposure shall be the location of the

²⁵ 5 U.S.C. 801 et seq.

borrower, determined consistent with paragraph (b)(1)(iv)(A) of this section.
* * * * *

■ 6. Revise paragraph (c)(2)(i) in § 324.21 to read as follows:

§ 324.21 Minority interest.

* * * * *

(c) * * *

(2) * * *

(i) The amount of common equity tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under § 324.11 or equivalent standards established by the subsidiary's home country supervisor; or

* * * * *

■ 7. Amend § 324.22 as follows:

■ a. Revise the introductory text of paragraph (a).

■ b. Revise the introductory text of paragraph (b)(1).

■ c. Revise the first sentence in paragraph (b)(2)(iv)(C).

■ d. Revise the last sentence, and republish footnote 21, in paragraph (c)(4)(i).

■ e. Revise the last sentence in paragraph (c)(5).

■ f. Revise the introductory text of paragraph (d)(1).

■ g. Revise paragraph (d)(3).

■ h. Revise the introductory text of paragraph (e)(3).

■ i. Revise paragraph (e)(5).

■ j. Revise paragraph (h)(2)(iii)(B)(1).

■ k. Revise paragraph (h)(3)(i).

■ l. Revise paragraph (h)(3)(iii)(A).

The revisions read as follows:

§ 324.22 Regulatory capital adjustments and deductions.

(a) *Regulatory capital deductions from common equity tier 1 capital.* An FDIC-supervised institution must deduct from the sum of its common equity tier 1 capital elements the items set forth in this paragraph (a):

* * * * *

(b) * * *

(1) An FDIC-supervised institution must adjust the sum of common equity tier 1 capital elements pursuant to the requirements set forth in this paragraph (b). Such adjustments to common equity tier 1 capital must be made net of the associated deferred tax effects.

* * * * *

(2) * * *

(iv) * * *

(C) An FDIC-supervised institution may, with the prior approval of the FDIC, change its AOCI opt-out election under this paragraph (b) in the case of a merger, acquisition, or purchase

transaction that meets the requirements set forth at paragraph (b)(2)(iv)(B) of this section, but does not meet the requirements of paragraph (b)(2)(iv)(A).

* * *

(c) * * *

(4) * * *

(i) * * * In addition, an FDIC-supervised institution that underwrites a failed underwriting, with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.²¹

* * * * *

(5) * * * In addition, with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an FDIC-supervised institution that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) if such investment is related to such failed underwriting.

(d) * * *

(1) An FDIC-supervised institution must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d) that, individually, exceeds 10 percent of the sum of the FDIC-supervised institution's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section (the 10 percent common equity tier 1 capital deduction threshold).

* * * * *

(3) For purposes of calculating the amount of DTAs subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds, an FDIC-supervised institution may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under § paragraph (b) of this section. An FDIC-supervised institution that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. An FDIC-supervised institution may change its exclusion preference only after obtaining the prior approval of the FDIC.

²¹ Any non-significant investments in the capital of unconsolidated financial institutions that do not exceed the 10 percent threshold for non-significant investments under this section must be assigned the appropriate risk weight under subparts D, E, or F of this part, as applicable.

(e) * * *

(3) For purposes of calculating the amount of DTAs subject to the threshold deduction in paragraph (d) of this section, the amount of DTAs that arise from net operating loss and tax credit carryforwards, net of any related valuation allowances, and of DTAs arising from temporary differences that the FDIC-supervised institution could not realize through net operating loss carrybacks, net of any related valuation allowances, may be offset by DTLs (that have not been netted against assets subject to deduction pursuant to paragraph (e)(1) of this section) subject to the conditions set forth in this paragraph (e).

* * * * *

(5) An FDIC-supervised institution must net DTLs against assets subject to deduction under this section in a consistent manner from reporting period to reporting period. An FDIC-supervised institution may change its preference regarding the manner in which it nets DTLs against specific assets subject to deduction under this section only after obtaining the prior approval of the FDIC.

* * * * *

(h) * * *

(2) * * *

(iii) * * *

(B) * * *

(1) The highest stated investment limit (in percent) for investments in the FDIC-supervised institution's own capital instruments or the capital of unconsolidated financial institutions as stated in the prospectus, partnership agreement, or similar contract defining permissible investments of the investment fund; or

* * * * *

(3) * * *

(i) The maturity of the short position must match the maturity of the long position, or the short position has a residual maturity of at least one year (maturity requirement); or

* * * * *

(iii) * * *

(A) An FDIC-supervised institution may only net a short position against a long position in the FDIC-supervised institution's own capital instrument under paragraph (c)(1) of this section if the short position involves no counterparty credit risk.

* * * * *

■ 8. Revise the introductory text of paragraph (k) in § 324.32 to read as follows:

§ 324.32 General risk weights.

* * * * *

(k) Past due exposures. Except for a sovereign exposure or a residential mortgage exposure, an FDIC-supervised institution must determine a risk weight for an exposure that is 90 days or more past due or on nonaccrual according to the requirements set forth in this paragraph (k).

■ 9. Revise paragraph (a)(1)(ii)(B) in § 324.34 to read as follows:

§ 324.34 OTC derivative contracts.

- (a) * * *
(1) * * *
(ii) * * *

(B) For purposes of calculating either the PFE under this paragraph (a) or the gross PFE under paragraph (a)(2) of this section for exchange rate contracts and other similar contracts in which the notional principal amount is equivalent to the cash flows, notional principal amount is the net receipts to each party falling due on each value date in each currency.

■ 10. Amend § 324.35 as follows:

- a. Revise paragraph (b)(2)(i)(A).
■ b. Revise paragraph (b)(2)(ii)(A).
■ c. Revise paragraph (c)(2)(i)(A).
■ d. Revise paragraph (c)(2)(ii)(A).
■ e. Revise paragraph (d)(3)(i)(F).
■ f. Designate the text following the formula in paragraph (d)(3)(ii) as paragraph (d)(3)(ii)(A).
■ g. Revise the second sentence in paragraph (d)(3)(ii)(A).

The revisions read as follows:

§ 324.35 Cleared transactions.

- (b) * * *
(2) * * *
(i) * * *

(A) The exposure amount for the derivative contract or netting set of derivative contracts, calculated using the methodology used to calculate exposure amount for OTC derivative contracts under § 324.34; plus

- (ii) * * *

(A) The exposure amount for the repo-style transaction calculated using the methodologies under § 324.37(c); plus

- (c) * * *
(2) * * *
(i) * * *

(A) The exposure amount for the derivative contract, calculated using the methodology to calculate exposure amount for OTC derivative contracts under § 324.34; plus

- (ii) * * *

(A) The exposure amount for repo-style transactions calculated using methodologies under § 324.37(c); plus

- (d) * * *
(3) * * *
(i) * * *

(F) Where a QCCP has provided its KCCP, an FDIC-supervised institution must rely on such disclosed figure instead of calculating KCCP under this paragraph (d), unless the FDIC-supervised institution determines that a more conservative figure is appropriate based on the nature, structure, or characteristics of the QCCP.

- (ii) * * *

(A) * * * For purposes of this paragraph (d), for derivatives A_Net is defined in § 324.34(a)(2)(ii) and for repo-style transactions, A_Net means the exposure amount as defined in § 324.37(c)(2) using the methodology in § 324.37(c)(3);

■ 11. Revise paragraph (c)(4)(i)(A) in § 324.37 to read as follows:

§ 324.37 Collateralized transactions.

- (c) * * *
(4) * * *
(i) * * *

(A) An FDIC-supervised institution must use a 99th percentile one-tailed confidence interval.

■ 12. Revise the first sentence in paragraph (b) in § 324.41 to read as follows:

§ 324.41 Operational requirements for securitization exposures.

(b) Operational criteria for synthetic securitizations. For synthetic securitizations, an FDIC-supervised institution may recognize for risk-based capital purposes the use of a credit risk mitigant to hedge underlying exposures only if each condition in this paragraph (b) is satisfied.

■ 13. Amend § 324.42 as follows:

- a. Revise the second sentence in paragraph (h)(1)(iv).
■ b. Revise the first sentence in paragraph (i)(1).

The revisions read as follows:

§ 324.42 Risk-weighted assets for securitization exposures.

- (h) * * *
(1) * * *
(iv) * * *

For purposes of determining whether an FDIC-

supervised institution is well capitalized for purposes of this paragraph (h), the FDIC-supervised institution's capital ratios must be calculated without regard to the capital treatment for transfers of small-business obligations under this paragraph (h).

- (i) * * *

(1) Protection provider. An FDIC-supervised institution may assign a risk weight using the SSFA in § 324.43 to an nth-to-default credit derivative in accordance with this paragraph (i).

■ 14. Amend § 324.43 as follows:

- a. Revise the last sentence in the introductory text of paragraph (c).
■ b. Revise paragraph (e)(3)(i).

The revisions read as follows:

§ 324.43 Simplified supervisory formula approach (SSFA) and the gross-up approach.

(c) * * * The risk weight assigned to a securitization exposure, or portion of a securitization exposure, as appropriate, is the larger of the risk weight determined in accordance with this paragraph (c) or paragraph (d) of this section and a risk weight of 20 percent.

- (e) * * *
(3) * * *

(i) The exposure amount of the FDIC-supervised institution's securitization exposure; and

■ 15. Revise paragraph (a)(3)(i)(A) in § 324.51 to read as follows:

§ 324.51 Introduction and exposure measurement.

- (a) * * *
(3) * * *
(i) * * *

(A) The policy owner of a separate account an amount equal to the shortfall between the fair value and cost basis of the separate account when the policy owner of the separate account surrenders the policy; or

■ 16. Revise the last sentence in paragraph (a) of § 324.63 to read as follows:

§ 324.63 Disclosures by FDIC-supervised institutions described in § 324.61.

(a) * * * The FDIC-supervised institution must make these disclosures publicly available for each of the last three years (that is, twelve quarters) or such shorter period beginning on January 1, 2015.

■ 17. Revise the last sentence in paragraph (a) of § 324.124 to read as follows:

§ 324.124 Merger and acquisition transitional arrangements.

(a) * * * If an FDIC-supervised institution relies on this paragraph (a), the FDIC-supervised institution must disclose publicly the amounts of risk-weighted assets and qualifying capital calculated under this subpart for the acquiring FDIC-supervised institution and under subpart D of this part for the acquired company.

■ 18. Revise the first sentence of paragraph (e)(4) in § 324.131 to read as follows:

§ 324.131 Mechanics for calculating total wholesale and retail risk-weighted assets.

(e) * * *
(4) *Non-material portfolios of exposures.* The risk-weighted asset amount of a portfolio of exposures for which the FDIC-supervised institution has demonstrated to the FDIC's satisfaction that the portfolio (when combined with all other portfolios of exposures that the FDIC-supervised institution seeks to treat under this paragraph (e)) is not material to the FDIC-supervised institution is the sum of the carrying values of on-balance sheet exposures plus the notional amounts of off-balance sheet exposures in the portfolio. * * *

■ 19. Amend § 324.132 as follows:

- a. Revise the second sentence in paragraph (d)(2)(iv)(A).
- b. Revise the second to last sentence in paragraph (d)(5)(iii)(B).

The revisions read as follows:

§ 324.132 Counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts.

(d) * * *
(2) * * *
(iv) * * *
(A) * * * For purposes of this paragraph (d), CVA does not include any adjustments to common equity tier 1 capital attributable to changes in the fair value of the FDIC-supervised institution's liabilities that are due to changes in its own credit risk since the inception of the transaction with the counterparty. * * *

(5) * * *
(iii) * * *

(B) * * * If the periodicity of the receipt of collateral is N-days, the minimum margin period of risk is the minimum margin period of risk under

this paragraph (d) plus N minus 1.

* * *
* * * * *
■ 20. Revise paragraph (d)(3)(i)(F) in § 324.133 to read as follows:

§ 324.133 Cleared transactions.

* * * * *
(d) * * *
(3) * * *
(i) * * *
(F) Where a QCCP has provided its K_{CCP} , an FDIC-supervised institution must rely on such disclosed figure instead of calculating K_{CCP} under this paragraph (d), unless the FDIC-supervised institution determines that a more conservative figure is appropriate based on the nature, structure, or characteristics of the QCCP.

* * * * *
■ 21. Revise § 324.142 as follows:

- a. Revise the second sentence in paragraph (k)(1)(iv).
- b. Revise the first sentence in paragraph (l)(1).
- c. Revise paragraph (m)(2)(ii)(B).
The revisions read as follows:

§ 324.142 Risk-weighted assets for securitization exposures.

* * * * *
(k) * * *
(1) * * *
(iv) * * * For purposes of determining whether an FDIC-supervised institution is well capitalized for purposes of this paragraph (k), the FDIC-supervised institution's capital ratios must be calculated without regard to the capital treatment for transfers of small-business obligations with recourse specified in paragraph (k)(1) of this section.

* * * * *
(l) * * *
(1) *Protection provider.* An FDIC-supervised institution must determine a risk weight using the supervisory formula approach (SFA) pursuant to § 324.143 or the simplified supervisory formula approach (SSFA) pursuant to § 324.144 for an nth-to-default credit derivative in accordance with this paragraph (l). * * *

(m) * * *
(2) * * *
(ii) * * *

(B) If the FDIC-supervised institution purchases the credit protection from a counterparty that is a securitization SPE, the FDIC-supervised institution must determine the risk weight for the exposure according to this section, including paragraph (a)(5) of this section for a credit derivative that has a first priority claim on the cash flows

from the underlying exposures of the securitization SPE (notwithstanding amounts due under interest rate or currency derivative contracts, fees due, or other similar payments).

■ 22. Revise the last sentence in the introductory text of paragraph (c) in § 324.144 to read as follows:

§ 324.144 Simplified supervisory formula approach (SSFA).

* * * * *
(c) * * * The risk weight assigned to a securitization exposure, or portion of a securitization exposure, as appropriate, is the larger of the risk weight determined in accordance with this paragraph (c), paragraph (d) of this section, and a risk weight of 20 percent.

* * * * *
■ 23. Revise the last sentence in the introductory text of paragraph (e) of § 324.210 to read as follows:

§ 324.210 Standardized measurement method for specific risk.

* * * * *
(e) * * * To determine the specific risk add-on of individual equity positions, an FDIC-supervised institution must multiply the absolute value of the current fair value of each net long or net short equity position by the appropriate specific risk-weighting factor as determined under this paragraph (e):

* * * * *
■ 24. Revise the last two sentences in the introductory text of paragraph (c) of § 324.211 to read as follows:

§ 324.211 Simplified supervisory formula approach (SSFA).

* * * * *
(c) * * * The values of parameters A and D, relative to K_A determine the specific risk-weighting factor assigned to a position as described in this paragraph (c) and paragraph (d) of this section. The specific risk-weighting factor assigned to a securitization position, or portion of a position, as appropriate, is the larger of the specific risk-weighting factor determined in accordance with this paragraph (c), paragraph (d) of this section, and a specific risk-weighting factor of 1.6 percent.

* * * * *
Dated at Washington, DC, this 8th day of April 2014.

By order of the Board of Directors,
Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

[FR Doc. 2014-08259 Filed 4-11-14; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 380

RIN 3064-AE05

Restrictions on Sales of Assets of a Covered Financial Company by the Federal Deposit Insurance Corporation

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (“FDIC”) is adopting a final rule (the “final rule”) to implement a section of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). Under that section, individuals or entities that have, or may have, contributed to the failure of a “covered financial company” cannot buy a covered financial company’s assets from the FDIC. The final rule establishes a self-certification process that is a prerequisite to the purchase of assets of a covered financial company from the FDIC.

DATES: This final rule is effective July 1, 2014.

FOR FURTHER INFORMATION CONTACT: Marc Steckel, Deputy Director, Division of Resolutions and Receiverships, 202–898–3618; Craig Rice, Senior Capital Markets Specialist, Division of Resolutions and Receiverships, 202–898–3501; Chuck Templeton, Senior Resolution Planning & Implementation Specialist, Office of Complex Financial Institutions, 202–898–6774; Elizabeth Falloon, Supervisory Counsel, Legal Division, 703–562–6148; Shane Kiernan, Counsel, Legal Division, 703–562–2632; Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 210(r) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5390(r) (“section 210(r)”), prohibits certain sales of assets held by the FDIC in the course of liquidating a covered financial company. The Dodd-Frank Act requires the FDIC to promulgate regulations which, at a minimum, prohibit the sale of an asset of a covered financial company by the FDIC to: (1) Any person who has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on one or more obligations exceeding \$1,000,000 to such covered financial company, has been found to have

engaged in fraudulent activity in connection with such obligation, and proposes to purchase any such asset in whole or in part through the use of financing from the FDIC; (2) any person who participated, as an officer or director of such covered financial company or of any affiliate of such company, in a material way in any transaction that resulted in a substantial loss to such covered financial company; or (3) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such covered financial company. Section 210(r) is derived from section 11(p) the Federal Deposit Insurance Act, 12 U.S.C. 1821(p) (“section 11(p)”), which imposes substantially similar restrictions on sales of assets of failed insured depository institutions by the FDIC. Section 210(r) applies only to sales of covered financial company assets by the FDIC, however, and not to sales of failed insured depository institution assets.

Notice of Proposed Rulemaking

On October 30, 2013, the Board of Directors approved a notice of proposed rulemaking entitled “Restrictions on Sales of Assets of a Covered Financial Company by the Federal Deposit Insurance Corporation” (the “proposed rule”), which was published in the **Federal Register** on November 6, 2013, with a 60-day comment period that ended on January 6, 2014. Two comment letters addressing the proposed rule were received by the FDIC. Both were generally supportive of the proposed rule. The contents of the comments and the FDIC’s responses thereto, as well as the differences between the text of the proposed rule and the final rule are addressed below.

II. Explanation of the Final Rule

With one exception, the final rule is unchanged from the proposed rule. Language is added to paragraph (f) in the final rule to require that a prospective purchaser certify that a sale of assets of a covered financial company by the FDIC is not structured to circumvent section 210(r) or the final rule.

The final rule is modeled after the FDIC’s regulation entitled “Restrictions on the Sale of Assets by the Federal Deposit Insurance Corporation,” at 12 CFR part 340 (“part 340”), which implements section 11(p), because section 210(r) and section 11(p) share substantially similar statutory language. Although the final rule is similar to part 340 in many ways, it is distinct because it would apply to sales of *covered financial company* assets by the FDIC

and not to sales of *failed insured depository institution* assets.¹

The final rule addresses the statutory prohibitions contained in section 210(r). It does not address other restrictions on sales of assets. For instance, the final rule does not address purchaser restrictions imposed by 12 CFR part 366 (“Minimum Standards of Integrity and Fitness for an FDIC Contractor”) and 5 CFR part 3201 (“Supplemental Standards of Ethical Conduct for Employees of the Federal Deposit Insurance Corporation”). Further, the final rule is separate and apart from any policy that the FDIC has, or may adopt or amend, regarding collection of amounts owed by obligors to a failed insured depository institution or a covered financial company. The focus of a collection policy is to encourage delinquent obligors to promptly repay or settle obligations, which is outside the scope of section 210(r) and the final rule.

Section-by-Section Analysis

Paragraph (a)(1) of the final rule states its purpose, which is to prohibit individuals or entities who improperly profited or engaged in certain acts of wrongdoing at the expense of a covered financial company or an insured depository institution, or whose actions resulted in serious mismanagement of a covered financial company or an insured depository institution, from buying assets of any covered financial company from the FDIC. Both comments on the proposed rule agreed that the restrictions on sales of assets of a covered financial company by the FDIC should apply to individuals or entities who engaged in wrongdoing with respect to any covered financial company and not just the covered financial company with which those individuals or entities were involved. One of the commenters also agreed that it is appropriate to prohibit individuals or entities that engaged in wrongdoing at the expense of an insured depository institution or seriously mismanaged an insured depository institution from buying assets of a covered financial company from the FDIC.

Paragraph (a)(2) describes the final rule’s applicability. Paragraph (a)(2)(i) states that the final rule applies to sales of assets of a covered financial company by the FDIC. The assets of a covered financial company vary in character and composition, and range from personal property to ownership of subsidiary

¹ Prospective purchasers seeking to buy assets of a failed insured depository institution from the FDIC should refer to part 340.

companies and entire operating divisions.

Paragraph (a)(2)(ii) delineates the applicability of the final rule to sales by a bridge financial company. Sales of bridge financial company assets are not expressly subject to the statutory prohibition under section 210(r) because once such assets are transferred to a bridge financial company, they are no longer “assets of a covered financial company” that are being sold “by the [FDIC].” The statute sets forth the “minimum” standards that the regulation shall meet but permits the FDIC to promulgate a more restrictive regulation in its discretion. In general, the FDIC anticipates that a bridge financial company’s charter, articles of incorporation or bylaws will require that the bridge financial company obtain approval from the FDIC as receiver before conducting certain significant transactions, such as a sale of a material subsidiary or line of business. Because a bridge financial company would be established by the FDIC to more efficiently resolve a covered financial company, the FDIC believes that the imposition of the restrictions set forth in the final rule on certain sales by a bridge financial company furthers the objective of section 210(r) by prohibiting the same persons restricted from buying covered financial company assets (officers and directors who engaged in fraudulent activity or caused substantial losses to a covered financial company, for example) from buying those assets after those assets have been transferred to a bridge financial company.

Paragraph (a)(2)(iii) clarifies the final rule’s applicability to sales of securities backed by a pool of assets (which pool may include assets of a covered financial company) by a trust or other entity. It provides that the restriction applies only to the sale of assets by the FDIC to an underwriter in an initial offering, and not to any other purchaser of the securities because subsequent sales to other purchasers would not be conducted by the FDIC.

Paragraph (a)(2)(iv) clarifies the applicability of section 210(r) and the final rule to certain types of transactions involving marketable securities and other financial instruments by stating that the prohibition does not apply to the sale of a security or a group or index of securities, a commodity, or any “qualified financial contract” (as defined in 12 U.S.C. 1821(e)(10)) that customarily is traded through a “financial intermediary” (as defined in the final rule) and where the seller cannot control selection of the purchaser and the sale is consummated through that customary practice. For

example, if the FDIC as receiver for a covered financial company were to sell publicly-traded stocks or bonds that the covered financial company held, it might well order the covered financial company’s broker or custodian to conduct the sale. The broker or custodian would then tender the securities to the market and accept prevailing market terms offered by another broker, a specialist, a central counterparty or a similar financial intermediary who would then sell the security to another purchaser. In this scenario it is not possible for the FDIC as receiver to control selection of the end purchaser at the time of sale. Therefore, the transaction cannot be a sale by the FDIC covered by the statute because the FDIC has no way to select the prospective purchaser or determine whether that purchaser would or would not be prohibited from purchasing the asset. Moreover, a prospective purchaser of such assets will not be able to select the FDIC as the seller and therefore could not determine whether Section 210(r) and the final rule apply to the transaction.

Under paragraph (a)(2)(v), judicial or trustee’s sales of property that secures an obligation to a covered financial company would not be covered under the final rule. Although the FDIC as receiver would have a security interest in the property serving as collateral and therefore the authority to initiate a foreclosure action, the selection of the purchaser and terms of the sale are not within the FDIC’s control. Rather, a court or trustee would conduct the sale in accordance with applicable state law and select the purchaser. In this situation, the sale is not a sale by the FDIC. This exception does not affect sales of collateral by the FDIC where the FDIC is in possession of the property and conducts the sale itself, however. Where the FDIC has control over the manner and terms of the sale, it will require the prospective purchaser’s certification that the prospective purchaser is not prohibited from purchasing the asset.

Section 210(r) creates an exception from the specified restrictions on sales for sales made pursuant to a settlement agreement with the prospective purchaser. It states that the restrictions do not apply if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement of, one or more claims that have been, or could have been, asserted by the FDIC against the person regardless of the amount of such claims or obligations. The final rule provides in paragraph (a)(2)(vi) that such sales are outside the scope of coverage.

One of the commenters suggested that the proposed rule provide that purchases in connection with a settlement of claims should be subject to the requirement that the settlement be submitted to, and approved by, a court. The FDIC has authority to settle claims involving receivership assets. Where settlements are not in the course of litigation, there is no avenue for judicial approval of the settlement, nor is such a requirement specified in the statute. Further, part 340 does not contain a requirement for judicial approval of settlements and the proposed rule was consistent with that approach. Thus, the FDIC does not believe it is appropriate to require judicial review and approval of settlements involving matters that are not in litigation and does not adopt this suggested change in the final rule.

Paragraph (a)(3) of the final rule makes it clear that the FDIC retains the authority to establish other policies restricting asset sales and expressly contemplates, among other things, the adoption of a policy prohibiting the sale of assets to other prospective purchasers, such as certain employees or contractors that the FDIC engages, or individuals or entities who are in default on obligations to the FDIC. The restrictions of the final rule are, however, limited to sales of assets of a covered financial company.

Paragraph (b) sets forth definitions used in the final rule. Several of these definitions have been adopted from part 340, such as the definitions of “person,” “associated person” and “default.” The term “financial intermediary,” which is not found in part 340, has been defined for use in the final rule as well.

Paragraph (c) of the final rule sets forth the operative precept for restricting asset sales. An individual or entity is ineligible to purchase assets from a covered financial company if it or its “associated person” has committed an act that meets one or more of the conditions under which the sale would be prohibited. In applying the rule, the first step is to determine whether the “person” who is the prospective purchaser is an individual or an entity. The next step is to determine who qualifies as an “associated person” (as defined in paragraph (b)(1) of the final rule) of that prospective purchaser. If the prospective purchaser is an individual, then its associated person is (i) that individual’s spouse or dependent child or member of his or her household, or (ii) any partnership or limited liability company of which the individual is or was a member, manager or general or limited partner, or (iii) any corporation of which the individual is or was an

officer or director. If the prospective purchaser is a partnership or other entity, then its associated person is (i) its managing or general partner or managing member, or (ii) an individual or entity that owns or controls 25% or more (individually or in concert) of the entity.

Under paragraph (c)(1), a person is ineligible to purchase any asset of a covered financial company from the FDIC if, prior to the appointment of the FDIC as receiver for the covered financial company, it or its associated person: (A) Has participated as an officer or director of a covered financial company or an affiliate thereof in a "material way in a transaction that caused a substantial loss to a covered financial company" (as defined in paragraph (c)(2) of the final rule and discussed below); (B) has been removed from, or prohibited from participating in the affairs of, an insured depository institution, an insurance company or a financial company pursuant to any final enforcement action by its primary financial regulatory agency; (C) has demonstrated a pattern or practice of defalcation regarding obligations to any financial company; (D) has been convicted of committing or conspiring to commit any offense under 18 U.S.C. 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343 or 1344 (having generally to do with financial crimes, fraud and embezzlement) affecting any covered financial company and is in default with respect to one or more obligations owed by that person or its associated person; or (E) would be prohibited from purchasing assets from a failed insured depository institution under 12 U.S.C. 1821(p) and part 340.

The final rule establishes parameters to determine whether an individual or entity has participated in a "material way in a transaction that caused a substantial loss to a covered financial company" as this concept is used but not defined in the statute. Under paragraph (c)(2), a person has participated in a material way in a transaction that caused a substantial loss to a covered financial company if, in connection with a substantial loss to a covered financial company, that person has been found in a final determination by a court or administrative tribunal, or is alleged in a judicial or administrative action brought by the FDIC or by any component of the government of the United States or of any state: To have violated any law, regulation, or order issued by a federal or state regulatory agency, or breached or defaulted on a written agreement with a federal or state regulatory agency or breached a written

agreement with a covered financial company; or to have breached a fiduciary duty owed to a covered financial company.

One commenter suggested that the FDIC should have standards and procedures under which it makes findings that a person, entity, or financial group has engaged in mismanagement or contributed to significant losses of a covered financial company so that it can be readily determined that such person, entity or financial group is ineligible to purchase or acquire assets of covered financial companies. Under the proposed rule, the basis for these determinations was set forth with specificity and varied based upon the cause for ineligibility. For instance, a person has participated in a "material way in a transaction that caused a substantial loss to a covered financial company" if found by a court or alleged by a regulatory agency to have violated law or breached an agreement or fiduciary duty in connection with the loss. In addition, the definitions of "default," "substantial loss," and "pattern or practice of defalcation" clarify the final rule's scope of coverage. This approach has been used under part 340 since that rule was promulgated in 2000 and has been found to be clear and effective based on practical experience. Therefore, the suggested change is not made in the final rule.

A "substantial loss," defined in paragraph (b), means: (i) An obligation that is delinquent for ninety (90) or more days and on which a balance of more than \$50,000 remains outstanding; (ii) a final judgment in excess of \$50,000 remains unpaid, regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding; (iii) a deficiency balance following a foreclosure or other sale of collateral in excess of \$50,000 exists, regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding; or (iv) any loss in excess of \$50,000 evidenced by an IRS Form 1099-C (Information Reporting for Cancellation of Debt). There is no reprieve for a prospective purchaser who has participated in a material way in a transaction that caused a substantial loss to a covered financial company. Such prospective purchaser is indefinitely prohibited from purchasing assets of any covered financial company from the FDIC notwithstanding the passage of any amount of time. The approach to determine whether a person has participated in a material way in a transaction that has caused a substantial loss to a covered financial company is comparatively similar to the approach under part 340. In the proposed rule, the

dollar threshold for a substantial loss was set at \$50,000, just as it is in part 340. The FDIC believes that the \$50,000 threshold is consistent with Section 210(r) because the statute sets the standards that the FDIC shall, at a minimum, establish by regulation and leaves the interpretation of subjective terms within the FDIC's discretion. This threshold is retained in the final rule.

Under paragraph (c)(3) of the final rule, a person or its associated person has demonstrated a "pattern or practice of defalcation" with respect to obligations to a covered financial company if the person or associated person has engaged in more than one transaction that created an obligation on the part of such person or its associated person with intent to cause a loss to a covered financial company or with reckless disregard for whether such transactions would cause a loss and the transactions, in the aggregate, caused a substantial loss to one or more covered financial companies.

Although the statute restricts only the sale of assets of the covered financial company that held the defaulted obligation of the prospective purchaser, the restrictions in the final rule apply regardless of which covered financial company's assets are being sold. The FDIC continues to believe that adopting this more stringent approach is consistent with Section 210(r) because the statute sets only the minimum standards that the FDIC must meet with implementation of the final rule. Moreover, both commenters agreed that the restrictions should apply to individuals or entities who engaged in wrongdoing with respect to any covered financial company and one expressed agreement with extension of the restrictions to individuals or entities who engaged in wrongdoing at the expense of an insured depository institution.

Paragraph (d) of the final rule restricts asset sales when the FDIC provides seller financing, including financing authorized under section 210(h)(9) of the Dodd-Frank Act. It restricts a prospective purchaser from borrowing money or accepting credit from the FDIC in connection with the purchase of covered financial company assets if there has been a default with respect to one or more obligations totaling in excess of \$1,000,000 owed by that person or its associated person and the person or its associated person made any fraudulent misrepresentations in connection with such obligation(s).

The FDIC does not intend to imply that it will provide seller financing in connection with any asset sales nor that, if it elects to provide seller financing, it

will do so to a person who does not meet other criteria that the FDIC may lawfully impose, such as creditworthiness. The FDIC has no obligation to provide seller financing even if the person is not in any way prohibited from purchasing assets from the FDIC under the restrictions set forth in the final rule.

Paragraph (f) sets forth the requirement that a prospective purchaser certify, before purchasing any asset from the FDIC and under penalty of perjury, that the sale would not be prohibited under the final rule. This requirement creates an effective mechanism to comply with section 210(r) and the final rule. The FDIC will provide the form for the certification and the final rule contemplates that the form may change over time.

One of the commenters suggested that the proposed rule provide that no proxies or indirect purchasers may be used with the objective of ultimately providing ownership, management or control to an individual or entity that would otherwise be prohibited from purchasing assets of a covered financial company and, further, that prospective purchasers certify that they are not acting on behalf of or for the benefit of any individual or entity that would be prohibited from purchasing assets of a covered financial company. The FDIC recognizes the risk that a straw buyer may be used and has included a statement in its form Purchaser Eligibility Certificate requiring a prospective purchaser to certify that neither the identity nor form of the prospective purchaser, nor any aspect of the contemplated transaction, has been created or altered with the intent, in whole or in part, to allow an individual or entity who otherwise would be ineligible to purchase assets from the FDIC to benefit directly or indirectly from the sale. The FDIC agrees that the proposed rule would be strengthened by adding this requirement to the text of the final rule and has done so in paragraph (f).

Certain types of entities are exempt from the self-certification requirement under paragraph (f)(1), unless the Director of the FDIC's Division of Resolutions and Receiverships (or designee) determines that a certification is required. These exempted entities are: (1) State or political subdivisions of a state; (2) federal agencies or instrumentalities such as the Government National Mortgage Association; (3) federally-regulated, government-sponsored enterprises such as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and (4) bridge

financial companies established by the FDIC. Because of the nature of these entities, including their organizational purposes or goals and the fact that they are subject to strict governmental control or oversight, it is reasonable to presume compliance with the final rule without requiring self-certification.

One of the commenters noted that the proposed rule does not specify the actions to be implemented if an improper, prohibited purchase is later found and suggested that the final rule provide that if a person is later found to have engaged in a prohibited purchase, then such purchase or acquisition is voidable. The FDIC has considered this suggestion and found that such a condition could pose significant practical issues with respect to conveyance of title to assets purchased from the FDIC. A conveyance that is potentially voidable could create uncertainty as to whether an acquirer or subsequent purchaser of an asset holds marketable title. Such a cloud on title could adversely affect the value of all assets sold by the FDIC if the market were to apply a discount for the risk that a sale could be voided on this basis. The proposed rule stated that the purchaser's certification is made under penalty of perjury and this is stated in the final rule as well.

III. Regulatory Analysis and Procedure

A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) (the "PRA"), 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 indicated by paragraph (f), the FDIC has developed a purchaser eligibility certification form relating to this final rule. The form will be used to establish compliance with the final rule by a prospective purchaser of assets of a covered financial company from the FDIC. The FDIC believes that the certification is a collection of information under the PRA and, consistent with the requirements of 5 CFR 1320.11, the FDIC has submitted the form to OMB for review under section 3507(d) of the PRA.

Title of Information Collection: Covered Financial Company Purchaser Eligibility Certification.

Affected Public: Prospective purchasers of covered financial company assets.

Frequency of Response: Event generated.

Estimated Number of Respondents: 20.

Time per Response: 30 minutes.

Total Estimated Annual Burden: 10 hours.

The FDIC has a continuing interest in comments on paperwork burden. 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.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601, *et seq.*, requires that each Federal agency either certify that a final rule will not have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment. The RFA provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The FDIC hereby certifies pursuant to 5 U.S.C. 605(b) that the final rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

Under regulations issued by the Small Business Administration (13 CFR 121.201), a "small entity" includes those firms in the "Finance and Insurance" sector whose size varies from \$7 million or less in assets to \$175 million or less in assets. The final rule is promulgated under Title II of the Dodd-Frank Act, which establishes a regime for the orderly liquidation of the nation's largest, and most systemic companies. For instance, companies subject to enhanced supervision under the Dodd-Frank Act include bank holding companies with assets in excess of \$50,000,000.00. The orderly liquidation of assets of such a large, systemic financial company generally will involve the sale of significant subsidiaries and business lines rather than smaller asset sales, and such sales are unlikely to impact a substantial number of small entities. Accordingly, there will be no significant economic

impact on a substantial number of small entities as a result of this final rule.

Moreover, the burden imposed by the final rule is the completion of a certification form described above in the Paperwork Reduction Act section. Completing the certification form does not require the use of professional skills or the preparation of special reports or records and has a minimal economic impact on those individuals and entities that seek to purchase assets from the FDIC. Thus, any impact on small entities will not be substantial.

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

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

D. Small Business Regulatory Enforcement Fairness Act

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

E. Plain Language

Section 722 of the Gramm-Leach-Bliley Act of 1999 (Pub. L. 106–102, 113 Stat. 1338, 1471) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner.

Text of the Final Rule

Federal Deposit Insurance Corporation
12 CFR Chapter III

List of Subjects in 12 CFR Part 380

Asset disposition, Bank holding companies, Covered financial companies, Financial companies, Holding companies, Insurance companies, Nonbank financial companies.

Authority and Issuance

For the reasons set forth in the Supplementary Information, the Federal Deposit Insurance Corporation amends Part 380 of Chapter III of Title 12, Code of Federal Regulations as follows:

PART 380—ORDERLY LIQUIDATION AUTHORITY

■ 1. Amend the authority for part 380 to read as follows:

Authority: 12 U.S.C. 5389; 12 U.S.C. 5390(s)(3); 12 U.S.C. 5390(b)(1)(C); 12 U.S.C. 5390(a)(7)(D); 12 U.S.C. 5381(b); 12 U.S.C. 5390(r).

■ 2. Part 380 is amended by adding § 380.13 to read as follows:

§ 380.13 Restrictions on sale of assets of a covered financial company by the Federal Deposit Insurance Corporation.

(a) *Purpose and applicability.* (1) *Purpose.* The purpose of this section is to prohibit individuals or entities that profited or engaged in wrongdoing at the expense of a covered financial company or an insured depository institution, or seriously mismanaged a covered financial company or an insured depository institution, from buying assets of a covered financial company from the FDIC.

(2) *Applicability.* (i) The restrictions of this section apply to the sale of assets of a covered financial company by the FDIC as receiver or in its corporate capacity.

(ii) The restrictions in this section apply to the sale of assets of a bridge financial company if:

(A) The sale is not in the ordinary course of business of the bridge financial company, and

(B) The approval or non-objection of the FDIC is required in connection with the sale according to the charter, articles of association, bylaws or other documents or instruments establishing the governance of the bridge financial company and the authorities of its board of directors and executive officers.

(iii) In the case of a sale of securities backed by a pool of assets that may include assets of a covered financial company by a trust or other entity, this section applies only to the sale of assets by the FDIC to an underwriter in an initial offering, and not to any other purchaser of the securities.

(iv) The restrictions of this section do not apply to a sale of a security or a group or index of securities, a commodity, or any qualified financial contract that customarily is traded through a financial intermediary, as defined in paragraph (b) of this section, where the seller cannot control selection of the purchaser and the sale is

consummated through that customary practice.

(v) The restrictions of this section do not apply to a judicial sale or a trustee’s sale of property that secures an obligation to the FDIC where the sale is not conducted or controlled by the FDIC.

(vi) The restrictions of this section do not apply to the sale or transfer of an asset if such sale or transfer resolves or settles, or is part of the resolution or settlement of, one (1) or more claims or obligations that have been, or could have been, asserted by the FDIC against the person with whom the FDIC is settling regardless of the amount of such claims or obligations.

(3) The FDIC retains the authority to establish other policies restricting asset sales. Neither 12 U.S.C. 5390(r) nor this section in any way limits the authority of the FDIC to establish policies prohibiting the sale of assets to prospective purchasers who have injured the respective covered financial company, or to other prospective purchasers, such as certain employees or contractors of the FDIC, or individuals who are not in compliance with the terms of any debt or duty owed to the FDIC in any of its capacities. Any such policies may be independent of, in conjunction with, or in addition to the restrictions set forth in this part.

(b) *Definitions.* Many of the terms used in this section are defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5301, et seq. Additionally, for the purposes of this section, the following terms are defined:

(1) *Associated person.* An “associated person” of an individual or entity means:

(i) With respect to an individual:

(A) The individual’s spouse or dependent child or any member of his or her immediate household;

(B) A partnership of which the individual is or was a general or limited partner or a limited liability company of which the individual is or was a member; or

(C) A corporation of which the individual is or was an officer or director;

(ii) With respect to a partnership, a managing or general partner of the partnership or with respect to a limited liability company, a manager; or

(iii) With respect to any entity, an individual or entity who, acting individually or in concert with one or more individuals or entities, owns or controls 25 percent or more of the entity.

(2) *Default.* The term “default” means any failure to comply with the terms of an obligation to such an extent that:

(i) A judgment has been rendered in favor of the FDIC or a covered financial company; or

(ii) In the case of a secured obligation, the lien on property securing such obligation has been foreclosed.

(3) *Financial intermediary.* The term “financial intermediary” means any broker, dealer, bank, underwriter, exchange, clearing agency registered with the SEC under section 17A of the Securities Exchange Act of 1934, transfer agent (as defined in section 3(a)(25) of the Securities Exchange Act of 1934), central counterparty or any other entity whose role is to facilitate a transaction by, as a riskless intermediary, purchasing a security or qualified financial contract from one counterparty and then selling it to another.

(4) *Obligation.* The term “obligation” means any debt or duty to pay money owed to the FDIC or a covered financial company, including any guarantee of any such debt or duty.

(5) *Person.* The term “person” means an individual, or an entity with a legally independent existence, including: A trustee; the beneficiary of at least a 25 percent share of the proceeds of a trust; a partnership; a limited liability company; a corporation; an association; or other organization or society.

(6) *Substantial loss.* The term “substantial loss” means:

(i) An obligation that is delinquent for ninety (90) or more days and on which there remains an outstanding balance of more than \$50,000;

(ii) An unpaid final judgment in excess of \$50,000 regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding;

(iii) A deficiency balance following a foreclosure of collateral in excess of \$50,000, regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding; or

(iv) Any loss in excess of \$50,000 evidenced by an IRS Form 1099-C (Information Reporting for Cancellation of Debt).

(c) *Restrictions on the sale of assets.*

(1) A person may not acquire any assets of a covered financial company from the FDIC if, prior to the appointment of the FDIC as receiver for the covered financial company, the person or its associated person:

(i) Has participated as an officer or director of a covered financial company or of an affiliate of a covered financial company in a material way in one or more transactions that caused a

substantial loss to a covered financial company;

(ii) Has been removed from, or prohibited from participating in the affairs of, a financial company pursuant to any final enforcement action by its primary financial regulatory agency;

(iii) Has demonstrated a pattern or practice of defalcation regarding obligations to a covered financial company;

(iv) Has been convicted of committing or conspiring to commit any offense under 18 U.S.C. 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343 or 1344 affecting any covered financial company and there has been a default with respect to one or more obligations owed by that person or its associated person; or

(v) Would be prohibited from purchasing the assets of a failed insured depository institution from the FDIC under 12 U.S.C. 1821(p) or its implementing regulation at 12 CFR part 340.

(2) For purposes of paragraph (c)(1) of this section, a person has participated in a “material way in a transaction that caused a substantial loss to a covered financial company” if, in connection with a substantial loss to the covered financial company, the person has been found in a final determination by a court or administrative tribunal, or is alleged in a judicial or administrative action brought by a primary financial regulatory agency or by any component of the government of the United States or of any state:

(i) To have violated any law, regulation, or order issued by a federal or state regulatory agency, or breached or defaulted on a written agreement with a federal or state regulatory agency, or breached a written agreement with a covered financial company; or

(ii) To have breached a fiduciary duty owed to a covered financial company.

(3) For purposes of paragraph (c)(1) of this section, a person or its associated person has demonstrated a “pattern or practice of defalcation” regarding obligations to a covered financial company if the person or associated person has:

(i) Engaged in more than one transaction that created an obligation on the part of such person or its associated person with intent to cause a loss to any financial company or with reckless disregard for whether such transactions would cause a loss to any such financial company; and

(ii) The transactions, in the aggregate, caused a substantial loss to one or more covered financial companies.

(d) *Restrictions when FDIC provides seller financing.* A person may not

borrow money or accept credit from the FDIC in connection with the purchase of any assets from the FDIC or any covered financial company if:

(1) There has been a default with respect to one or more obligations totaling in excess of \$1,000,000 owed by that person or its associated person; and

(2) The person or its associated person made any fraudulent misrepresentations in connection with any such obligation(s).

(e) *No obligation to provide seller financing.* The FDIC still has the right to make an independent determination, based upon all relevant facts of a person’s financial condition and history, of that person’s eligibility to receive any loan or extension of credit from the FDIC, even if the person is not in any way disqualified from purchasing assets from the FDIC under the restrictions set forth in this section.

(f) *Purchaser eligibility certificate required.* (1) Before any person may purchase any asset from the FDIC that person must certify, under penalty of perjury, that none of the restrictions contained in this section applies to the purchase. The person must also certify that neither the identity nor form of the person, nor any aspect of the contemplated transaction, has been created or altered with the intent, in whole or in part, to allow an individual or entity who otherwise would be ineligible to purchase assets from the FDIC to benefit directly or indirectly from the proposed transaction. The FDIC may establish the form of the certification and may change the form from time to time.

(2) Notwithstanding paragraph (f)(1) of this section, and unless the Director of the FDIC’s Division of Resolutions and Receiverships, or designee, in his or her discretion so requires, a certification need not be provided by:

(i) A state or political subdivision of a state;

(ii) A federal agency or instrumentality such as the Government National Mortgage Association;

(iii) A federally-regulated, government-sponsored enterprise such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; or

(iv) A bridge financial company.

Dated at Washington, DC, this 8th day of April, 2014.

By Order of the Board of Directors, Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

[FR Doc. 2014–08258 Filed 4–11–14; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 25**

[Docket No. FAA-2013-0772; Special Conditions No. 25-520-SC]

Special Conditions: Embraer S.A., Model EMB-550 Airplanes; Flight Envelope Protection: Normal Load Factor (g) Limiting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Embraer S.A. Model EMB-550 airplane. This airplane will have a novel or unusual design feature associated with an electronic flight control system that prevents the pilot from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* May 14, 2014.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Airplane and Flight Crew Interface Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone 425-227-2011; facsimile 425-227-1149.

SUPPLEMENTARY INFORMATION:**Background**

On May 14, 2009, Embraer S.A. applied for a type certificate for its new Model EMB-550 airplane. The Model EMB-550 airplane is the first of a new family of jet airplanes designed for corporate flight, fractional, charter, and private owner operations. The airplane has a conventional configuration with low wing and T-tail empennage. The primary structure is metal with composite empennage and control surfaces. The Model EMB-550 airplane is designed for 8 passengers, with a maximum of 12 passengers. It is equipped with two Honeywell HTF7500-E medium bypass ratio turbofan engines mounted on aft fuselage pylons. Each engine produces approximately 6,540 pounds of thrust for normal takeoff. The primary flight controls consist of hydraulically

powered fly-by-wire elevators, ailerons, and rudders controlled by the pilot or copilot sidestick.

The design of the electronic flight control system for the Model EMB-550 airplane incorporates normal load factor limiting on a full time basis that prevents the flight crew from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. This feature is considered novel and unusual in that the current regulations do not provide standards for maneuverability and controllability evaluations for such systems.

Type Certification Basis

Under the provisions of Title 14, Federal Code of Regulations (14 CFR) 21.17, Embraer S.A. must show that the Model EMB-550 airplane meets the applicable provisions of part 25, as amended by Amendments 25-1 through 25-127 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model EMB-550 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model EMB-550 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92-574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model EMB-550 airplane will incorporate the following novel or unusual design features: The design of the electronic flight control system incorporates normal load factor limiting on a full-time basis that will prevent the flight crew from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. This

feature is considered novel because the current regulations do not provide standards for maneuverability and controllability evaluations for such systems. Therefore, special conditions are needed to ensure adequate maneuverability and controllability when using this design feature.

Discussion

Title 14, Code of Federal Regulations, part 25 sections do not specify requirements or policy for demonstrating maneuver control that impose any handling qualities requirements beyond the design limit structural loads. Nevertheless, some pilots have become accustomed to the availability of this excess maneuver capacity in case of extreme emergency such as upset recoveries or collision avoidance.

As with previous fly-by-wire airplanes, the FAA has no regulatory or safety reason to prohibit a design for an electronic flight control system with load factor limiting. It is possible that pilots accustomed to this feature feel more freedom in commanding full-stick displacement maneuvers because of the following:

- Knowledge that the limit system will protect the structure,
- Low stick force/displacement gradients,
- Smooth transition from pilot elevator control to limit control.

These special conditions will ensure adequate maneuverability and controllability when using this design feature.

Discussion of Comments

Notice of proposed special conditions No. 25-13-05-SC for Embraer S.A. Model EMB-550 airplanes was published in the **Federal Register** on October 25, 2013 (78 FR 63902). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Model EMB-550 airplane. Should Embraer S.A. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Embraer S.A. Model EMB-550 airplanes.

1. Flight Envelope Protection: Normal Load Factor (g) Limiting.

To meet the intent of adequate maneuverability and controllability required by § 25.143(a), and in addition to the requirements of § 25.143(a) and in the absence of other limiting factors, the following special conditions are issued based on § 25.333(b):

(a) The positive limiting load factor must not be less than:

(1) 2.5g for the normal state of the electronic flight control system with the high lift devices retracted.

(2) 2.0g for the normal state of the electronic flight control system with the high lift devices extended.

(b) The negative limiting load factor must be equal to or more negative than:

(1) Minus 1.0g for the normal state of the electronic flight control system with the high lift devices retracted.

(2) 0.0g for the normal state of the electronic flight control system with high lift devices extended.

(c) Maximum reachable positive load factor wings level may be limited by the characteristics of the electronic flight control system or flight envelope protections (other than load factor protection) provided that:

(1) The required values are readily achievable in turns, and

(2) That wings level pitch up is satisfactory.

(d) Maximum achievable negative load factor may be limited by the characteristics of the electronic flight control system or flight envelope protections (other than load factor protection) provided that:

(1) Pitch down responsiveness is satisfactory, and

(2) From level flight, 0g is readily achievable, or alternatively, a satisfactory trajectory change is readily achievable at operational speeds. For the FAA to consider a trajectory change as satisfactory, the applicant should propose and justify a pitch rate that provides sufficient maneuvering capability in the most critical scenarios.

(e) Compliance demonstration with the above requirements may be

performed without ice accretion on the airframe.

(f) These special conditions do not impose an upper bound for the normal load factor limit, nor does it require that the limiter exist. If the limit is set at a value beyond the structural design limit maneuvering load factor *n* of §§ 25.333(b), 25.337(b), 25.337(c), there should be a very obvious positive tactile feel built into the controller so that it serves as a deterrent to inadvertently exceeding the structural limit.

Issued in Renton, Washington, on April 8, 2014.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014-08275 Filed 4-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 36**

[Docket No. FAA-2012-0948; Amdt. No. 36-30]

RIN 2120-AJ96

Stage 3 Helicopter Noise Certification Standards; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The Federal Aviation Administration (FAA) published in the **Federal Register** of March 4, 2014 a document adopting more stringent noise certification standards for helicopters that are certificated in the United States (U.S.). Inadvertently the incorrect amendment number was assigned. This document corrects the amendment number cited in the heading of the final rule.

DATES: This correction is effective April 14, 2014.

FOR FURTHER INFORMATION CONTACT: Katherine Haley, Office of Rulemaking, ARM-203, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-5708; fax (202) 267-5075; email ralen.gao@faa.gov.

SUPPLEMENTARY INFORMATION: The FAA published a document in the **Federal Register** of March 4, 2014 (79 FR 12040) as Amendment Number 36-29. In FR Doc. 2014-04479, Amdt. No. 36-29 is incorrect. This document corrects the amendment number published on March 4, 2014.

In FR Doc. 2014-04479, beginning on page 12040 in the **Federal Register** of

March 4, 2014, make the following correction:

On page 12040, in the second column heading, correct the amendment number from “36-29” to “36-30”.

Issued in Washington, DC, on April 4, 2014.

Lirio Liu,

Director, Office of Rulemaking.

[FR Doc. 2014-07941 Filed 4-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2013-0951; Airspace Docket No. 13-ASW-22]

RIN 2120-AA66

Modification of Area Navigation (RNAV) Route Q-20, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies RNAV route Q-20 by relocating the FUSCO waypoint (WP) southwest to match the intersection of Jet routes J-15 and J-183. This action enhances the safe and efficient management of aircraft within the National Airspace System.

DATES: Effective Date: 0901 UTC, July 24, 2014. The Director of the **Federal Register** approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:**History**

The FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Q-20 by moving the FUSCO WP to match the intersection of Jet Routes J-15 and J-183, and re-designate the WP as a fix (78 FR 70900, November 27, 2013). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

Subsequent to publication of the NPRM, a refined geographic latitude/longitude position was calculated for the FUSCO WP in the description of RNAV route Q-20. In the NPRM, the FUSCO waypoint geographic position was proposed at "lat. 31°10'38" N., long. 101°19'47" W." It has been determined that a more accurate alignment of the WP position is "lat. 31°10'37" N., long. 101°19'45" W." This rule changes the RNAV WP geographic position in the RNAV route Q-20 description to "lat. 31°10'37" N., long. 101°19'45" W." to more accurately reflect the WP location and match the information contained in the FAA's aeronautical database.

This is a minor change to more accurately reflect the position of the FUSCO WP in the descriptions of RNAV route Q-20; therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 by modifying Q-20 in support of the Houston Metroplex project to improve air traffic flows, increase capacity and fuel efficiency, and reduced track distances. Q-20 extends between the Corona, NM, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) navigation aid and the Junction, TX, VORTAC navigation aid. This action amends Q-20 by relocating the FUSCO WP 0.48 nautical miles southwest to match the intersection of J-15 and J-183. Additionally, this action re-designates FUSCO as a fix. This modification enables aircraft flying eastbound via J-15, J-183, or Q-20, to file direct, after FUSCO, to a published transition to any of the Houston Standard Terminal Arrival Routes. This rule simplifies flight plan filing and flight management computer entries; thus, reducing the potential for routing

errors in addition to the benefits mentioned previously.

High altitude RNAV routes are published in paragraph 2006 of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this rule will be subsequently published in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as

required to enhance the safe and efficient flow of air traffic in the United States.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

Paragraph 2006 United States Area Navigation Routes

* * * * *

Q-20 CNX, NM to JCT, TX [Amended]

Table with 3 columns: Location, Type, and Coordinates. Rows include Corona (CNX), HONDS, UNNOS, FUSCO, and Junction (JCT) with their respective VORTAC/fix status and latitude/longitude coordinates.

Issued in Washington, DC, on April 7, 2014.

Gary A. Norek,

Manager, Airspace Policy and Regulations Group.

[FR Doc. 2014-08243 Filed 4-11-14; 8:45 am]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. FDA-2001-F-0049 (Formerly Docket No. 01F-0047)]

Irradiation in the Production, Processing and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (“FDA” or “we”) is amending the food additive regulations to provide for the safe use of ionizing radiation for control of food-borne pathogens in crustaceans at a maximum absorbed dose of 6.0 kiloGray (kGy). This action is in response to a petition filed by the National Fisheries Institute.

DATES: This rule is effective April 14, 2014. See section VII of this document for information on the filing of objections. Submit either electronic or written objections and requests for a hearing by May 14, 2014.

ADDRESSES: You may submit either electronic or written objections and requests for a hearing identified by Docket No. FDA-2001-F-0049, by any of the following methods:

Electronic Submissions

Submit electronic objections in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Written Submissions

Submit written objections in the following ways:

- *Mail/Hand delivery/Courier (for paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA-2001-F-0049 for this rulemaking. All objections received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting objections, see the “Objections” heading of the **SUPPLEMENTARY INFORMATION** section.

Docket: For access to the docket to read background documents or objections received, go to <http://www.regulations.gov> and insert the docket number(s), found in brackets in the heading of this document, into the

“Search” box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Teresa A. Croce, Center for Food Safety and Applied Nutrition (HFS-265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240-402-1281.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of February 6, 2001 (66 FR 9086), we announced that a food additive petition (FAP 1M4727) had been filed by the National Fisheries Institute, 1901 North Fort Myer Dr., Arlington, VA 22209 (petitioner). The petition proposed that the food additive regulations in part 179, *Irradiation in the Production, Processing and Handling of Food* (21 CFR part 179), be amended to provide for the safe use of approved sources of ionizing radiation for control of food-borne pathogens in raw, frozen, cooked, partially cooked, shelled, or dried¹ crustaceans or cooked or ready-to-cook crustaceans processed with batter, breading, spices, or small amounts of other food ingredients. In a letter dated July 16, 2009, the petitioner asked FDA to modify the scope of the petition to exclude consideration of breaded and battered crustaceans. Subsequently, we published an amended notice of filing for the petition of February 6, 2001, in the **Federal Register** (74 FR 47592; September 16, 2009), indicating that the petition proposed to amend the regulations in part 179 to provide for the use of ionizing radiation for the control of food-borne pathogens in raw, frozen, cooked, partially cooked, shelled, or dried crustaceans, or cooked or ready-to-cook crustaceans processed with spices or small amounts of other food ingredients. On August 31, 2012, at our request the petitioner clarified the scope of its amended petition from 2009 by providing us with a list of the particular “other food ingredients” that would be added to the crustaceans prior to being irradiated (Ref. 2).

The petitioner requested a maximum absorbed dose of 6.0 kGy to achieve a 6-log reduction of *Listeria monocytogenes*.

II. Evaluation of Safety

Under section 201(s) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321(s)), a source of radiation used to treat food is defined

¹ Dried crustaceans refer to crustaceans with a water activity (a_w) of 0.85 or below (Ref. 1).

as a food additive.² While the source of radiation is not literally added to the food, the radiation is used to process or treat food, such that, analogous to other food processing technologies, its use can affect the characteristics of the food. In the subject petition, the intended technical effect is to reduce the microbial load on and prolong the shelf life of crustaceans.

Under section 409(c)(3)(A) of the FD&C Act (21 U.S.C.348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the evidence establishes that the additive is safe for that use. Safe or safety in the context of food additives “means that there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use. It is impossible in the present state of scientific knowledge to establish with complete certainty the absolute harmlessness of the use of any substance.”³

The FD&C Act does not prescribe the safety tests to be performed and not all food additives require the same amount or type of testing. The amount and type of testing required to establish the safety of an additive will vary depending on the particular additive and its intended use.

Specifically, in evaluating the safety of a source of radiation to treat food intended for human consumption, we must identify the various effects that may result from irradiating the food and assess whether any of these effects pose a public health concern. In this regard, the following three areas of possible concern need to be addressed: (1) Potential toxicity, (2) nutritional adequacy, and (3) potential microbiological risk from the treated food. Each of these areas is discussed in detail in this document. We have considered the data and studies submitted in the subject petition as well as additional data and information in our possession relevant to safety. This includes our previous evaluations of the safety of the irradiation of other foods, including the irradiation of poultry (“poultry rule”) (55 FR 18538; May 2, 1990), the irradiation of meat (“meat rule”) (62 FR 64107; December 3, 1997), the irradiation of molluscan shellfish

² The term “food additive” means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use) (21 U.S.C. 321(s)).

³ 21 CFR 170.3(i).

("molluscan shellfish rule") (70 FR 48057; August 16, 2005), and the irradiation of fresh iceberg lettuce and fresh spinach ("fresh iceberg lettuce and fresh spinach rule") (73 FR 49593; August 22, 2008).

A. Radiation Chemistry

"Radiation chemistry" refers to the chemical reactions that occur as a result of the absorption of ionizing radiation. Numerous studies regarding the chemical effects of ionizing radiation on different foods under varied conditions have led to a sound understanding of the fundamental principles of radiation chemistry.⁴ The knowledge gained through these studies provided us with a knowledge base from which general conclusions about irradiated foods can be drawn by extrapolating from data on particular foods irradiated under specific conditions to similar types of foods irradiated under different, yet related, conditions. Overall, the data show that the type and amount of products generated by the radiation-induced chemical reactions ("radiolysis products") are dependent upon the chemical constituents of the food and the specific conditions under which the food has been irradiated. The principles of radiation chemistry also govern the extent of change, if any, in the nutrient level and the microbial load of irradiated foods.

We have reviewed the pertinent data and information concerning radiation chemistry as it applies specifically to crustaceans irradiated at a maximum absorbed dose of 6.0 kGy. As described in the review memoranda, our safety review of the conditions of use generally focused on the effects of irradiation on the portion that individuals are most likely to consume, i.e., the meat or flesh of crustaceans.

1. Factors Affecting the Radiation Chemistry of Foods

Along with the chemical composition of the food, the specific conditions of irradiation are essential to assessing the radiation chemistry of a given food. The specific conditions include radiation dose, physical state of the food (e.g., solid or frozen versus liquid or non-

frozen state, dried versus hydrated state), and ambient atmosphere (e.g., air, reduced oxygen, or vacuum). The radiation dose directly affects the levels of radiolysis products generated in a particular food; therefore, we can extrapolate from data obtained at higher radiation doses to draw conclusions about the amounts of radiolysis products expected to be generated at lower doses. Generally, the types of radiolysis products resulting from irradiation are similar to those products generated by alternative food processing methods, such as canning and cooking (Refs. 3 and 4).

The extent of chemical change that occurs when food is irradiated is also determined by the physical state of the food. When the food is in a frozen state, the initial radiolysis products have a greater tendency to recombine rather than diffuse throughout the food and react with other food components. Provided all conditions are the same, including dose and ambient atmosphere, the extent of chemical change that occurs in a specific food will be lower if the food is in a frozen state than a non-frozen state because the radiolysis products are less mobile in frozen conditions. Likewise, the extent of change in the dehydrated state is less than the change that occurs in the fully hydrated state.

Furthermore, the atmosphere can affect the formation of radiolytic products in a given food, thus having the potential to affect the chemical composition of the food. Irradiation in oxygenated environments facilitates the formation of additional oxidation-reduction (redox) agents as a result of the interaction between oxygen and the radiolysis products of water (e.g., hydrogen radical, hydroxide radical, and solvated electrons (a free electron in a solution)). Because all foods have components that are susceptible to redox reactions, an atmosphere with high oxygen content increases the likelihood of such occurrences and therefore, leads to the formation of a greater number and variety of radiolysis products when compared to an atmosphere with low oxygen content (Refs. 3 and 5). The final products of radiation-induced oxidation reactions in foods are similar to those produced by oxidation reactions induced by other processes (e.g., storage or heating in air).

In general, the types of radiolysis products generated by irradiation are similar to those produced by other food processing methods (Refs. 3 and 4). Radiation-induced chemical changes, if sufficiently large, however, may cause changes in the organoleptic or sensory properties of the food. Because food

processors wish to avoid undesirable effects on taste, odor, color, or texture, there is an incentive to minimize the extent of these chemical changes in food. Thus, in most cases, the dosage selected will be the lowest dose required to achieve the desired effect, and the irradiation will be conducted under reduced oxygen levels and/or on food held at low temperatures or in the frozen state.⁵

2. Radiation Chemistry of the Major Components of Crustaceans

The major components of crustaceans are water, proteins, and lipids. Irradiation of water produces reactive hydroxyl and hydrogen radicals. These radicals are likely to recombine forming water, hydrogen gas, or hydrogen peroxide; however, they can react with other components of the irradiated food, in this instance, crustaceans, forming secondary radiolysis products. While the most significant effects of irradiation on the protein and lipid components of crustaceans result from chemical reactions induced by radicals generated from the radiolysis of water, additional radiolysis products can result directly from the absorbed radiation. These products form in very small amounts and are the same as or similar to compounds found in food that have not been irradiated (Ref. 4).

Because meat is high in protein, lipids, and water, the radiation chemistry of proteins, lipids, and water (in both liquid and frozen states) was extensively discussed in the preamble to the meat rule (62 FR 64107 at 64110 to 64111). The radiation chemistry of proteins and lipids discussed in the meat rule is also relevant to other flesh foods, including foods such as poultry and fish, that may be referred to as "meat" in common usage, but that do not conform to the definition of meat in 9 CFR 301.2.

Crustaceans are similar to other flesh foods in that they consist predominately of protein (up to 21 percent), lipid (approximately 1 to 2 percent), and water (74 to 84 percent). However, they differ from other flesh food in that they contain lower levels of fat and slightly higher levels of carbohydrate (up to 2.5 percent) by weight of the raw edible portion (Ref. 6). While the carbohydrate level in crustaceans is slightly higher than in other flesh foods, the overall level remains relatively low.

a. *Proteins.* We have previously provided a detailed discussion of

⁵ In the case of crustaceans, irradiation would occur under either chilled or frozen conditions. This temperature requirement is not necessary for dried crustaceans because they are shelf stable due to their low water activity.

⁴ Several books provide more detailed discussions of radiation chemistry with references to the large number of original research studies, particularly in the area of food irradiation. Sources that can be consulted for further information include, but are not limited to: "Radiation Chemistry of Major Food Components," edited by P.S. Elias and A.J. Cohen, Elsevier, Amsterdam, 1977; "Recent Advances in Food Irradiation," edited by P.S. Elias and A.J. Cohen, Elsevier, Amsterdam, 1983; and J.F. Diehl, "Chemical Effects of Ionizing Radiation," Chapter 3 in "Safety of Irradiated Foods," Marcel Dekker, New York, 1995.

protein radiation chemistry in the meat and molluscan shellfish rules. Studies conducted with high-protein foods such as meat, poultry, and seafood, have established that most of the radiolysis products derived from proteins possess the same amino acid composition and may be denatured (i.e., only altered in their secondary and tertiary structures). Although the changes to proteins caused by ionizing radiation are similar to those that occur as a result of heating, the changes are far less pronounced and the amounts of reaction products generated are far lower (Refs. 4 and 7). Studies have established that there is little change in the amino acid composition of fish irradiated at doses of 50 kGy and below, which is above the maximum absorbed dose for crustaceans—6.0 kGy (Ref. 8). Therefore, we conclude that no significant change in the amino acid composition of crustaceans is expected to result from the conditions set forth in this regulation.

b. *Carbohydrates*. The main effects of ionizing radiation on carbohydrates in foods have been studied extensively and discussed at length in the scientific literature (Refs. 9 and 10) as well as in reviews by such bodies as the World Health Organization (WHO) (Ref. 11). In the presence of water, carbohydrates react primarily with the hydroxyl radicals generated by radiolysis of water resulting in the abstraction of hydrogen from the carbon-hydrogen bonds of the carbohydrate, forming water and a carbohydrate radical. Carbohydrate radicals may result from ionization of monosaccharides such as glucose or polysaccharides such as starch. In polysaccharides, the glycosidic linkages between constituent monosaccharide units may be broken, effectively shortening the polysaccharide chains. Starch may be degraded into dextrins, maltose, and glucose. Sugar acids, ketones, and other sugar monosaccharides may also be formed as a result of ionizing radiation. Various studies have demonstrated that radiation-induced products formed from starches of different origin are qualitatively similar. The overall effects of ionizing radiation on carbohydrates are the same as those caused by cooking and other food processing treatments, and carbohydrates present as a component of food are less sensitive to the effects of irradiation than pure carbohydrates (Ref. 3). No significant change in the carbohydrate composition of crustaceans is expected to occur under the conditions set forth in this regulation, i.e., at a maximum absorbed dose of 6.0 kGy.

c. *Lipids*. We have previously provided a detailed discussion on the

radiation chemistry of lipids in both the preambles to the meat and molluscan shellfish rules (62 FR 64107 at 64110 to 64111 and 70 FR 48057 at 48060, respectively). This discussion noted that studies have identified a variety of radiolysis products derived from lipids. These include fatty acids, esters, aldehydes, ketones, alkanes, alkenes, and other hydrocarbons, which are identical or analogous to compounds found in foods that have not been irradiated, but have been subjected to a different type of processing (Refs. 12 and 13). Heating food causes the lipids to produce these types of compounds, but in levels far greater than the trace amounts produced from irradiating food (Ref. 14).

One major difference between fish (both shellfish and finfish) and other flesh foods is the predominance of polyunsaturated fatty acids (PUFAs) in the lipid phase of fish. PUFAs are a subclass of lipids that have a higher degree of unsaturation in the hydrocarbon chain compared to saturated (e.g., stearic acid) or monounsaturated (e.g., oleic acid) fatty acids. The PUFA subclass of lipids is generally more susceptible to oxidation than saturated fatty acids due to their higher degree of unsaturation. Therefore, PUFAs could be more radiation-sensitive compared to the other lipid components, as suggested by some studies on irradiated oil (Ref. 15). However, evidence from studies in meat suggests that the protein component of meat may protect lipids from oxidative damage (Ref. 3).

The effects of irradiation on PUFAs in fish have been described in several studies we have reviewed, which are also discussed in detail in the molluscan shellfish rule. These studies show that irradiation is not likely to have a significant effect on the lipid composition of seafood. For example, Adams et al. studied the effects of irradiation on the concentration of PUFAs in herring and showed that irradiation of herring fillets at sterilizing doses (50 kGy), well above the petitioned maximum dose for crustaceans, had no effect on the concentration of PUFAs (Ref. 16). Armstrong et al. conducted a study to evaluate the effects of ionizing radiation on fatty acid composition in fish and concluded that no significant changes occurred in the fatty acid profiles upon irradiation at 1, 2, or 6 kGy (Ref. 17). Sant'Ana and Mancini-Filho studied the effects of irradiation on the distribution of fatty acids in fish, evaluating two monounsaturated fatty acids and seven PUFAs before and after irradiation at 3 kGy (Ref. 18). They observed

insignificant changes in the concentration of total monounsaturated fatty acids and an approximately 13 percent decrease in total PUFAs at 3 kGy; these losses were largely attributed to a loss of the long chain PUFAs. Research conducted by FDA on various species of seafood also demonstrated that the concentrations of PUFAs are not significantly affected by irradiation (Refs. 19 and 20). More recently, a study conducted by Sinanoglou et al. reported non-significant changes in total fat and total fatty acids for mollusks and crustaceans with irradiation at 4.7 kGy, confirming our earlier conclusions that irradiation does not significantly affect PUFAs (Ref. 21). Therefore, based on the totality of evidence, we conclude that no significant loss of PUFAs is expected to occur in the diet under the conditions of irradiation set forth in this regulation.

3. Radiation Chemistry of Food Ingredients Added to Crustaceans

The petitioner clarified that the “other food ingredients” intended to be added to the crustaceans prior to treatment with irradiation included spices,⁶ minerals, inorganic salts, citrates, citric acid, and calcium disodium EDTA (calcium disodium ethylenediaminetetraacetate).⁷ We considered the list of compounds and determined that for any mineral or inorganic salt, there will be no change in the exposure to radiolysis products because these compounds are not impacted by the direct or secondary effects of irradiation (Ref. 22). Furthermore, upon assessment of the organic compounds that were requested, we determined that these compounds (i.e., citric acid, citrates, and calcium disodium EDTA) will react when irradiated to form products at low levels (concentrations below the parts per billion level) that are similar to products that are formed as a result of lipid oxidation reactions, such as carbon dioxide and formic acid. As we stated in section II.2.c., we have previously evaluated the safety of the radiolysis products formed as a result of lipid

⁶ The term “spice” refers to dried or dehydrated aromatic vegetable substances that are used in small amounts solely for flavoring or aroma (e.g., black pepper, red pepper, and bay leaves). This term is consistent with the currently regulated use of “spice” in § 179.26(b)(5) (21 CFR 179.26(b)(5)).

⁷ This regulation addresses the irradiation of these “other food ingredients” to the extent that their use in crustaceans is authorized. The use of other ingredients in crustaceans prior to irradiation must be consistent with existing food additive regulations, generally recognized as safe determinations, and prior sanctions. For example, calcium disodium EDTA is approved for use under the conditions specified in 21 CFR 172.120 in cooked canned shrimp and cooked canned crabmeat and is not approved for use in other types of shrimp or crabmeat or in other crustaceans.

oxidation reactions and have concluded that these products are not harmful. Moreover, the addition of these specific organic compounds to crustaceans prior to irradiation results in the formation of these radiolysis products at such low levels that irradiation of crustaceans with the proposed additional food ingredients will not meaningfully increase exposure to radiolysis products (*ibid.*).

Overall, we concluded that the irradiation of all proposed ingredients will not increase the exposure to radiolysis products when used on crustaceans at levels consistent with good manufacturing practices (GMP) and in accordance with other applicable laws and regulations.

4. Consideration of Furan as a Radiolysis Product

During our review of the chemical effects of irradiation, as a part of the evaluation of this and other irradiation petitions, we became aware of a report that suggested irradiating apple juice ("apple juice report") may produce furan (Ref. 23). Studies have demonstrated that furan can cause tumors in laboratory animals. This prompted us to initiate research on whether the apple juice report was accurate and whether furan was a common radiolysis product in food. We confirmed that certain foods form furan in low quantities when irradiated. Our studies also show that some foods form furan when heated and other foods form furan during storage at refrigeration temperatures (Ref. 24). Testing of irradiated raw shrimp and cooked crab meat show that if furan is formed when these foods are irradiated, it is formed at levels that are below the limit of detection of the available analytical methods, or below the background levels of natural furan formation during storage (Ref. 25). Therefore, because all crustaceans have similar composition, we concluded that the consumption of irradiated crustaceans will not increase the amount of furan in the diet.

5. Consideration of 2-Alkylcyclobutanones as Radiolysis Products

A class of radiolysis products derived from lipids, identified as 2-alkylcyclobutanones (2-ACBs), has been reported to form in small quantities when fats are exposed to ionizing radiation. These compounds were once considered to be unique products, formed in small quantities during the irradiation process; however, a recent report has demonstrated that 2-ACBs also can be detected in non-irradiated food (Ref. 26). The type of 2-

ACBs formed depends on the fatty acid composition of the food. For example, 2-dodecylcyclobutanone (2-DCB) is a radiation by-product of triglycerides with esterified palmitic acid. Researchers have reported that 2-DCB is formed in small amounts (less than 1 microgram per gram lipid per kGy) in irradiated chicken (Ref. 27) and in even smaller amounts in irradiated ground beef (Ref. 28). Both of these foods are of relatively high total fat and palmitic acid content (Ref. 6).

In the molluscan shellfish rule, we provided a detailed discussion of the significance of the formation of 2-DCB to the safety evaluation of irradiated molluscan shellfish, a food which, like chicken, ground beef, and crustaceans, contains significant amounts of triglycerides with esterified palmitic acid (70 FR 48057 at 48065 to 48067). We concluded that no issues were raised that had not been previously considered in the meat and poultry final rules (70 FR 48057 at 48060 and 48065 to 48067). In our assessment in the meat rule, we considered all of the available data and information, including the results of genotoxicity studies and previously reviewed studies in which animals were fed diets containing irradiated meat, poultry, and fish (62 FR 64107 at 64113). While 2-DCB and other alkylcyclobutanones would be expected to be present in these irradiated foods, we found no evidence of toxicity attributable to the consumption of these substances. The macronutrient composition of crustaceans (protein, lipid, carbohydrate) is comparable to other flesh foods (Ref. 6). Due to the similar lipid levels, the formation of 2-ACBs in crustaceans is expected to be similar to the levels of 2-ACBs produced in other flesh foods. Therefore, considering all available data and information, the formation of 2-ACBs from irradiating crustaceans under the conditions proposed in this petition is not a safety concern.

B. Toxicological Considerations

To adequately evaluate the safety of irradiated food products, we assessed all available toxicological data from the relevant toxicology studies of which we are aware. For the toxicological evaluation of irradiated crustaceans, the relevant studies are those studies examining flesh-based foods, including studies on fish high in PUFAs. These include 24 long-term feeding studies, 10 reproduction/teratology studies, and 15 genotoxicity studies with flesh-based foods irradiated at doses from 6 to 74 kGy. No toxicologically significant adverse effects attributable to irradiated

flesh foods were observed in any of the studies, all of which were discussed in detail in the meat rule (62 FR 64107 at 64112 to 64114). The dose of irradiation used in the relevant studies was similar to, or considerably higher than, the maximum absorbed dose requested in this petition (6.0 kGy). Therefore, these data demonstrate that crustaceans irradiated at levels up to 6.0 kGy will not present a toxicological hazard (Ref. 7).

In evaluating the safety of irradiated crustaceans, we also relied upon the integrated toxicological database derived from the extensive body of work reviewed by us (Ref. 29) and by WHO relevant to the assessment of the potential toxicity of irradiated foods. Although these studies are not all of equal quality or rigor,⁸ we concluded that the quantity and breadth of testing, as well as the number and significance of endpoints assessed would have identified any real or meaningful hazard. The overwhelming majority of studies showed no evidence of toxicity. In those few instances where adverse effects were reported, we found that those effects have not been consistently reproduced in related studies conducted at higher doses or for longer durations, as would be expected if the effects were attributable to irradiation (62 FR 64107 at 64112 to 64114).

Similarly, during the early 1980s, a joint Food and Agriculture Organization/International Atomic Energy Agency, World Health Organization (FAO/IAEA/WHO) Expert Committee evaluated the toxicological and microbiological safety and nutritional adequacy of irradiated foods. The Expert Committee concluded that irradiation of any food commodity at an average dose of up to 10 kGy presents no toxicological hazard (Ref. 30). In the 1990s, at the request of one of its member states, FAO/IAEA/WHO conducted a new review and analysis of the safety of data on irradiated foods. This more recent review included all studies in our files that we considered as reasonably complete, as well as those studies that appeared to be acceptable but had deficiencies interfering with the interpretation of the data (62 FR 64107 at 64112). The FAO/IAEA/WHO review also included data from the U.S.

⁸For example, the number of animals used in many of the early studies is smaller than that commonly used today. Complete histopathology was not always done or reported. For some studies, the data are available in only brief summary form. While many of these studies cannot individually establish safety for the previously cited reasons, they still provide important information that, evaluated collectively, supports a conclusion that there is no reason to believe that the irradiation of flesh foods presents a toxicological hazard.

Department of Agriculture (USDA) and from the German Federal Research Centre for Nutrition at Karlsruhe, Germany. FAO/IAEA/WHO concluded that the integrated toxicological database is sufficiently sensitive to evaluate safety and that no adverse toxicological effects due to irradiation were observed in the dose ranges tested (Ref. 31).

Therefore, based on the totality of evidence, we conclude that irradiation of crustaceans under the conditions proposed in this petition does not present a toxicological hazard.

C. Nutritional Considerations

It has been well established that the nutritional value of the macronutrients (proteins, fats, and carbohydrates) in the diet are not significantly altered by irradiation at the petitioned doses (Refs. 32 to 34). PUFAs, particularly long-chain, omega-3 fatty acids, are generally considered to be nutritionally important components of seafood. As noted in section II.A.2.c., PUFA levels were not reduced significantly by ionizing radiation. Thus, we conclude that, as with molluscan shellfish (70 FR 48057 at 48060), potential losses of PUFAs from irradiation of crustaceans would be expected to be minimal and have no nutritional significance.

We have carefully reviewed the data and information submitted in the petition, as well as additional information available in the scientific literature, to determine the potential impact of irradiation at a maximum absorbed dose of 6.0 kGy on the nutritional value of crustaceans (Ref. 32). In this review, FDA considered all nutrients known to be present in crustaceans, but focused primarily on those vitamins having an established sensitivity to radiation and those vitamins for which at least one of these foods⁹ may be identified, under our labeling regulations, as either a “good source” or an “excellent source,”¹⁰ for contributing more than a trivial amount to the total dietary intake of that vitamin (i.e., more than 1 to 2 percent).¹¹

⁹Nutrient content data was available from the USDA Nutrient Database (NDB) for Standard Reference, version 23 (SR-23) for the following crustaceans: Crab (blue, king, queen, Dungeness), shrimp, lobster, and crayfish (see Refs. 6, 32, and 35).

¹⁰To be considered a “good source” a given vitamin, that particular food must contain 10–19 percent of the Reference Daily Intake (RDI) or Daily Reference Value (DRV) for that vitamin per reference amount customarily consumed (RACC) (21 CFR 101.54(c)). A food containing ≥ 20 percent of the RDI or DRV per RACC may be labeled as an “excellent source” of that vitamin (21 CFR 101.54(b)).

¹¹This information is based upon individual food intake data available from nationwide surveys

Irradiation of any food, regardless of the dose, has no effect on the levels of minerals that are present in trace amounts (Ref. 3). Levels of certain vitamins, on the other hand, may be reduced as a result of irradiation. The extent to which a reduction in the level of a specific vitamin occurs as a result of food irradiation depends on the specific vitamin, the type of food, and the conditions of irradiation. Not all vitamin loss is nutritionally significant; however, and the extent to which a reduction in a specific vitamin level is significant depends on the relative contribution of the food in question to the total dietary intake of the vitamin.

Crustaceans, as a group, show some variation in vitamin content, but all crustaceans are excellent sources of vitamin B₁₂, and certain crustaceans may be identified as good sources of folate, niacin, riboflavin, pyridoxine, pantothenic acid, and vitamin C. Certain crustaceans (i.e., shrimp and blue crab) contain vitamin E at levels greater than 10 percent of the current Reference Daily Allowance per reference amount customarily consumed (RACC). Of these vitamins present in crustaceans, only vitamin C, thiamin, vitamin E, and, to a lesser extent pyridoxine, are considered to be sensitive to irradiation (Ref. 32). Although thiamin is present in other types of flesh food, crustaceans are not considered a good source of thiamin (ibid.). Despite the presence of vitamin C, pyridoxine, and vitamin E in crustaceans, they make up a negligible amount of the dietary intake of these vitamins in the United States. Based on data from the USDA Continuing Survey of Food Intakes of Individuals (Ref. 35), the entire food category of “fish/shellfish (excluding canned tuna)” contributes to less than 1 percent of the vitamin C intake of the U.S. diet and less than 2 percent of the vitamin E and pyridoxine intakes of the U.S. diet. Furthermore, because crustaceans account for only 40 percent of the entire category of “fish/shellfish (excluding canned tuna),” the impact of these vitamin levels from consuming crustaceans will be of even less significance (Ref. 32). Potential losses of vitamin C, thiamine, vitamin E, and pyridoxine, as a result of irradiation of crustaceans at a maximum absorbed dose of 6.0 kGy, are of minimal to no consequence to the overall U.S. diet.

conducted by USDA and maintained in the USDA NDB SR-23. USDA’s surveys were designed to monitor the types and amounts of foods eaten by Americans and food consumption patterns in the U.S. population. FDA routinely uses these data to estimate exposure to various foods, food ingredients, and food contaminants (see Refs. 6, 35, and 36).

Other vitamins present in crustaceans (i.e., niacin, pantothenic acid, vitamin B₁₂, and folate) are relatively insensitive to irradiation, particularly at the doses requested by this petition. Of these vitamins, only vitamin B₁₂ is provided in meaningful amounts to the U.S. diet from the intake of crustaceans. The stability of vitamin B₁₂ to irradiation has been demonstrated in numerous studies and was previously discussed in the molluscan shellfish rule (70 FR 48057 at 48062). Molluscan shellfish contain the highest amounts of vitamin B₁₂ among foods considered to be fish/shellfish; therefore, our evaluation and discussion in the molluscan shellfish rule are relevant to this petition. Further, in its review of this petition, we considered potential B₁₂ losses in crustaceans in addition to other irradiated foods containing vitamin B₁₂ (ibid.). We conclude that any potential losses of radiation-insensitive vitamins in foods, irradiated under the conditions described in this petition, would be minor and the resulting impact on nutrient intake in the U.S. diet would be negligible (ibid.).

We also analyzed the contribution of crustaceans to vitamin D intake and found that only 0.30 percent of dietary vitamin D for U.S. adults (18 years and older) comes from the consumption of crustaceans (Ref. 37). Due to this small contribution of vitamin D from crustaceans to the overall U.S. dietary intake, the potential losses of this vitamin from crustaceans irradiated under the conditions described in this regulation would be minor and the resulting health impact would be negligible.

Based on review of the available data and information, we conclude that irradiation of crustaceans with a maximum absorbed dose of 6.0 kGy will not adversely impact the nutritional adequacy of the diet.

D. Microbiological Considerations

Irradiation at the requested doses will reduce, but not entirely eliminate, the number of viable pathogenic (illness causing) microorganisms in or on crustaceans. Furthermore, as discussed in this document, irradiation of crustaceans is expected to extend the shelf-life of the treated product by reducing the number of non-pathogenic food spoilage microorganisms.

The predominant non-pathogenic bacterial flora of freshly caught fish or shellfish are from the *Pseudomonas* group, with *Acinetobacter* and *Moraxella*, generally present. As crustaceans begin to spoil, the bacteria from the *Pseudomonas* group can increase to as much as 90 percent of the

total flora (Ref. 38). *Escherichia coli*, *Vibrio* spp., *Listeria* spp., *Salmonella* serovars, *Staphylococcus aureus*, and *Clostridium botulinum* were identified by the petitioner as the human pathogens of public health concern that are most likely to be present in or on crustaceans. The level and route of entry of the different types of microorganisms in crustaceans is variable, and this contamination can result from harvesting, handling, and transportation (Ref. 39). Vibrios are naturally present in marine environments, and consequently, present in or on crustaceans. The petitioner provided data on the potential levels of microbial pathogens in various crustacean seafoods. While most observed levels of microbial pathogens are much lower, the petitioner states that *Listeria* could be present at up to 10^4 colony forming units per gram (CFU/g), vibrios at 10^6 CFU/g, salmonellas, streptococci, and staphylococci at <10 CFU/g, and *C. botulinum* at no more than 0.17 CFU/g. Yeasts and molds also may be present; however, these organisms would be limited by aerobic packaging (i.e., oxygen-permeable packaging) and the presence of normal spoilage bacteria (Ref. 40).

The petitioner provided reports and published articles describing the effects of irradiation on the microorganisms in or on crustaceans as well as in or on other seafood. The effectiveness of irradiation is a function of the sensitivity of the target microorganisms to ionizing radiation at a dose that will retain the organoleptic and nutritional characteristics of the food. The type and physical state of the food product, its temperature, ambient atmosphere, and the survival of non-pathogens also are factors that can either enhance or diminish the survivability of the organisms treated with ionizing radiation. Data show that the more complex the milieu, the greater the level of radiation necessary to reduce the level of microorganisms (Ref. 41). Reports and published articles provide data on the doses needed to control several microorganisms of relevance, including various *Salmonella*, *Vibrio* spp., *S. aureus*, *L. monocytogenes*, and *E. coli*. Due to organoleptic considerations, the doses used will vary depending on the type of crustacean; for example, absorbed doses greater than 0.7 kGy may affect the texture of non-frozen lobster meat, whereas other types of crustaceans tolerate higher doses without experiencing undesirable changes.

There is a large body of work regarding the radiation sensitivities of non-pathogenic food spoilage

microorganisms and pathogenic food-borne microorganisms. Generally, the common spoilage organisms such as *Pseudomonas* and the pathogens of concern are quite sensitive to the effects of ionizing radiation. Chen et al. investigated the microbial quality of irradiated crab meat products, including white lump meat, claw, and crab fingers (Ref. 42). The D_{10} values¹² for spoilage bacteria ranged from less than 0.40 to 0.46 kGy. Further, it was determined that the shelf-life of food products derived from the claw and finger of crabs were extended approximately 3 days beyond the unirradiated samples (ibid.). Following irradiation fresh, peeled, and deveined tropical shrimps stored at 10–12 degrees Celsius were found to have an increase in shelf-life to 10–14 days when irradiated at 1.5 kGy and 18–21 days when irradiated at 2.5 kGy as compared to the unirradiated control samples, which spoiled within 4 days (Ref. 43). In a study performed by Scholz et al., irradiation at 5 kGy extended the shelf-life of Pacific shrimp (*Pandalus jordani*) to 5 weeks when stored at 3 degrees Celsius (Ref. 44).

Information regarding doses needed for control of pathogenic organisms in the petition and other information in our files show that D_{10} values for vibrios can range from less than 0.10 up to 0.75 kGy depending on the crustacean, its physical state, temperature, and other factors (Refs. 39, 42, 45, and 46). In frozen, unpeeled, and uncooked shrimp, the D_{10} values for *L. monocytogenes* ranged from 0.7 kGy to 0.88 kGy (Refs. 39 and 47) and in crab meat, the D_{10} value cited in the literature was 0.59 kGy (Ref. 42).¹³ The D_{10} values cited in the published literature for several *Salmonella* serotypes in grass prawns and shrimp homogenate ranged from 0.30 to 0.59 kGy (Refs. 45, 49, and 50). Thus, irradiation of crustaceans at a maximum absorbed dose of 6.0 kGy would be effective at controlling pertinent pathogens (Ref. 40).

In evaluating the subject petition, we have carefully considered whether irradiation of crustaceans under the conditions proposed in the petition could result in significantly altered microbial growth patterns such that these foods would present a greater

microbiological hazard than comparable food that had not been irradiated. In considering this issue, we focused on whether the proposed irradiation conditions would increase the probability of significantly increased growth of, and subsequent toxin production by, *C. botulinum* because this organism is relatively resistant to radiation in comparison to non-spore forming bacteria. We have concluded that the possibility of increased microbiological risk from *C. botulinum* is extremely remote because: (1) The conditions of refrigerated storage necessary to maintain the quality of crustaceans are not amenable to the outgrowth and production of toxin by *C. botulinum* and (2) sufficient numbers of spoilage organisms will survive such that spoilage will occur before outgrowth and toxin production by *C. botulinum* (Refs. 40 and 51).

Based on the available data and information, we conclude that irradiation of crustaceans conducted in accordance with current GMP under 21 CFR 172.5 will reduce bacterial populations without increased microbial risk from pathogens that may survive the irradiation process.

III. Comments

We have received numerous comments, primarily form letters, from individuals stating their opinions regarding the potential dangers and unacceptability of irradiating food. We have also received several comments from individuals or organizations stating their opinions regarding the potential benefits of irradiating food and urging us to approve the petition. None of these letters contain any substantive information relevant to a safety evaluation of irradiated crustaceans. Additionally, we received several comments from Public Citizen (PC) and the Center for Food Safety (CFS) requesting the denial of this and other food irradiation petitions, as well as joint comments from CFS and Food and Water Watch (FWW).

Overall, the comments were of a general nature and not specific to the requests in the individual petitions. These comments raised a number of topics, including studies reviewed in the 1999 FAO/IAEA/WHO report on high-dose irradiation; a review article that analyzed studies of irradiated foods performed in the 1950s and 1960s; the findings of a 1971 study in which rats were fed irradiated strawberries; the findings regarding reproductive performance in a 1954 study in which mice were fed a special irradiated diet; issues regarding mutagenicity studies; certain international opinions; issues

¹² D_{10} is the absorbed dose of radiation required to reduce a bacterial population by 90 percent.

¹³ The petitioner requested a maximum absorbed dose of 6.0 kGy to achieve a 6-log reduction of *L. monocytogenes*. Dividing the treatment dose by the appropriate D_{10} value estimates the log reduction for a given treatment dose (e.g., 6 kGy divided by 0.88 for frozen, unpeeled, uncooked shrimp has the potential to yield a 6.8 log reduction) (Ref. 48). This demonstrates that it is possible to achieve a 6-log reduction of *L. monocytogenes* with a maximum absorbed dose of 6 kGy.

related to ACBs, including purported promotion of colon cancer; the findings of certain studies conducted by the Indian Institute of Nutrition in the 1970s; general issues regarding toxicity data; our purported failure to meet statutory requirements; data from a 2002 study purportedly showing an irradiation-induced increase in trans fatty acids in ground beef; studies regarding purported elevated hemoglobin levels and their significance; and an affidavit describing the opinions of a scientist regarding the dangers of irradiation and advocating the use of alternative methods for reducing the risk of food-borne disease. The topics raised in the FWW/CFS comments included issues with ACBs, our purported failure to define a list of foods covered by the petition; general issues with toxicity data; purported microbiological resistance; and purported negative effects on organoleptic properties.

Many of the comments from PC and CFS were also submitted to the dockets for the rulemakings on the irradiation of molluscan shellfish (Docket No. 1999F-4372, FAP 9M4682) and on the irradiation of fresh iceberg lettuce and fresh spinach (Docket No. FDA-1999-F-2405, FAP 9M4697). For a detailed discussion of our responses to the previously mentioned general comments, we refer to the molluscan shellfish rule (70 FR 48057 at 48062 to 48071). For a detailed discussion of our response to the FWW/CFS comments, we refer to our fresh iceberg lettuce and fresh spinach rule (73 FR 49593 at 49600-49601).

Accordingly, because these comments do not raise issues specific to irradiated crustaceans and because we have already responded to these comments elsewhere, we are not further addressing these comments in this document.

There were no additional comments submitted to this docket.

IV. Conclusions

Based on the data and studies submitted in the petition and other information in our files, we conclude that the proposed use of irradiation to treat chilled or frozen raw, cooked, or partially cooked crustaceans, or dried crustaceans, with or without spices, minerals, inorganic salts, citrates, citric acid, and/or calcium disodium EDTA used in accordance with applicable laws and regulations, is safe, providing that the absorbed dose does not exceed 6.0 kGy. Therefore, we are amending § 179.26 as set forth in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that we considered and

relied upon in reaching our decision to approve the petition are available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 171.1(h), we will delete from the documents any materials that are not available for public disclosure.

V. Environmental Impact

We have previously considered the environmental effects of this rule as announced in the notice of filing for FAP 1M4727 (66 FR 9086). No new information or comments have been received that would affect our previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VI. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Objections

If you will be adversely affected by one or more provisions of this regulation, you may file with the Division of Dockets Management (see **ADDRESSES**) either electronic or written objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) to which you object and the grounds for your objection. Within each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of the specific factual information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection.

It is only necessary to send one set of documents. Identify documents with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

VIII. Section 301(I) of the Federal Food, Drug, and Cosmetic Act

FDA's review of this petition was limited to section 409 of the FD&C Act. This final rule is not a statement regarding compliance with other sections of the FD&C Act. For example, the Food and Drug Administration Amendments Act of 2007, which was signed into law on September 27, 2007, amended the FD&C Act to, among other things, add section 301(I) of the FD&C Act (21 U.S.C. 331(I)). Section 301(I) of the FD&C Act prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the FD&C Act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or biological product for which substantial clinical investigations have been instituted and their existence has been made public, unless one of the exceptions in section 301(I)(1) to (4) of the FD&C Act applies. In its review of this petition, FDA did not consider whether section 301(I) of the FD&C Act or any of its exemptions apply to irradiated crustaceans. Accordingly, this final rule should not be construed to be a statement that irradiated crustaceans, if introduced or delivered for introduction into interstate commerce, would not violate section 301(I) of the FD&C Act. Furthermore, this language is included in all food additive final rules and therefore, should not be construed to be a statement of the likelihood that section 301(I) of the FD&C Act applies.

IX. References

The following sources are referred to in this document. References marked with an asterisk (*) have been placed on display at the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. References without asterisks are not on display; they are available as published articles and books.

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List of Subjects in 21 CFR Part 179

Food additives, Food labeling, Food packaging, Radiation protection, Reporting and record keeping requirements, Signs and symbols.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 179 is amended as follows:

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

- 1. The authority citation for 21 CFR part 179 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 373, 374.

- 2. Section 179.26 is amended in the table in paragraph (b) by adding item 14 to read as follows:

§ 179.26 Ionizing radiation for the treatment of food.

* * * * *

(b) * * *

Use	Limitations
* * *	* *
14. For control of food-borne pathogens in, and extension of the shelf-life of, chilled or frozen raw, cooked, or partially cooked crustaceans or dried crustaceans (water activity less than 0.85), with or without spices, minerals, inorganic salts, citrates, citric acid, and/or calcium disodium EDTA.	Not to exceed 6.0 kGy.

* * * * *

Dated: April 4, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014-07926 Filed 4-11-14; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 890

[Docket No. FDA-2013-N-0568]

Physical Medicine Devices; Reclassification of Stair-Climbing Wheelchairs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final order to reclassify stair-climbing wheelchairs, a class III device, into class II (special controls) based on new information and subject to premarket notification, and further clarify the identification.

DATES: This order is effective April 14, 2014.

FOR FURTHER INFORMATION CONTACT: Mike Ryan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1615, Silver Spring, MD 20993, 301-796-6283.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94-295), the Safe Medical Devices Act of 1990 (Pub. L. 101-629), the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105-115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107-250), the Medical Devices Technical Corrections Act (Pub. L. 108-214), the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110-85), and the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112-144), among other amendments, established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513(d) of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976

(generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices), are automatically classified by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

On July 9, 2012, FDASIA was enacted. Section 608(a) of FDASIA amended section 513(e) of the FD&C Act, changing the mechanism for reclassifying a device from rulemaking to an administrative order.

Section 513(e) of the FD&C Act governs reclassification of classified preamendments devices. This section provides that FDA may, by administrative order, reclassify a device based upon "new information." FDA can initiate a reclassification under section 513(e) of the FD&C Act or an interested person may petition FDA to reclassify a preamendments device. The term "new information," as used in section 513(e) of the FD&C Act, includes information developed as a result of a reevaluation of the data before the Agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland-Rantos Co. v. United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn v. Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell v. Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the Agency is an appropriate basis for subsequent action where the reevaluation is made in light of newly available authority (see *Bell*, 366 F.2d at

181; *Ethicon, Inc. v. FDA*, 762 F.Supp. 382, 388–391 (D.D.C. 1991)), or in light of changes in “medical science” (*Upjohn*, 422 F.2d at 951). Whether data before the Agency are old or new data, the “new information” to support reclassification under section 513(e) must be “valid scientific evidence,” as defined in section 513(a)(3) of the FD&C Act and 21 CFR 860.7(c)(2). (See, e.g., *General Medical Co. v. FDA*, 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Mfrs. Assoc. v. FDA*, 766 F.2d 592 (D.C. Cir. 1985), cert. denied, 474 U.S. 1062 (1986).)

FDA relies upon “valid scientific evidence” in the classification process to determine the level of regulation for devices. To be considered in the reclassification process, the “valid scientific evidence” upon which the Agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending premarket approval application (PMA). (See section 520(c) of the FD&C Act (21 U.S.C. 360j(c)).) Section 520(h)(4) of the FD&C Act, added by FDAMA, provides that FDA may use, for reclassification of a device, certain information in a PMA 6 years after the application has been approved. This includes information from clinical and preclinical tests or studies that demonstrate the safety or effectiveness of the device but does not include descriptions of methods of manufacture or product composition and other trade secrets.

Section 513(e)(1) of the FD&C Act sets forth the process for issuing a final order. Specifically, prior to the issuance of a final order reclassifying a device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments to a public docket. FDA published a proposed order to reclassify this device in the **Federal Register** of June 12, 2013 (78 FR 35173). FDA received and has considered 285 comments on this proposed order, as discussed in section II. FDA has held a meeting of a device classification panel described in section 513(b) of the FD&C Act with respect to stair-climbing wheelchairs and, therefore, has met this requirement under section 513(e)(1) of the FD&C Act. As further described in section III, a meeting of a device classification panel described in section 513(b) of the FD&C Act took place on December 12, 2013 (78 FR 66942, November 7, 2013), to discuss whether stair-climbing wheelchairs should be reclassified or remain in class III, and

the panel recommended that the device be reclassified into class II because there was sufficient information to establish special controls. FDA is not aware of new information since the panel that would provide a basis for a different recommendation or findings.

II. Public Comments in Response to the Proposed Order

In response to the June 12, 2013 (78 FR 35173), proposed order to reclassify stair-climbing wheelchairs, FDA received 285 comments. Comments were received from consumers and other stakeholders who are personally or professionally associated with a stair-climbing wheelchair user. These individuals included users, family members, friends, and professionals such as occupational and physical therapists. Several veterans and patient advocacy groups also responded. The majority of the comments received advocated that this device be classified into class II, but the comments did not include information relevant to the safety, effectiveness, or risks of these devices, aside from personal experience, which focused on payment and availability issues and are not directly relevant to the types of information necessary for a classification decision. One comment from a representative of a patient advocacy coalition opposed the reclassification to class II, stating that, “This change in classification would result in greater risk for some of our nation’s most vulnerable consumers,” and citing safety data published on FDA’s Web site and described in section 5 of the FDA’s Executive Panel Summary (Ref. 1), as well as the risks of the device as outlined in section V of the proposed order.

The Agency disagrees with this comment regarding risks and believes it has identified the relevant risks to health (see section V of the proposed order and sections III and IV of this document) and special controls that will be effective in mitigating these risks (see section VIII of the proposed order and the codified language of this document). These risks and mitigations were based on the input of the original classification panel in 1976; data in PMAs available to FDA under section 520(h)(4) of the FD&C Act, added by FDAMA; the information in the 2012 reclassification petition (Ref. 2); the information gathered from FDA’s Manufacturer and User Facility Device Experience (MAUDE) database and FDA’s literature review (see FDA’s Executive Panel Summary, Ref. 1); and the recommendations of the December 12, 2013, Orthopedic and Rehabilitation

Devices Panel of the Medical Devices Advisory Committee (Ref. 3), as further described in section III of this document. Further, FDA believes that the identified special controls mitigate these risks and provide a reasonable assurance of safety and effectiveness in this patient population.

III. Deliberations of the Panel

On December 12, 2013, the Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee (the Panel) considered the reclassification of stair-climbing wheelchair devices from class III to class II (special controls) (Ref. 3). The Panel was asked to provide input on the risks to health, safety, and effectiveness of these devices.

The reclassification of stair-climbing wheelchair devices was supported by the Panel. At the Panel, FDA proposed a new identification for stair-climbing wheelchairs that differed from the identification given in the proposed order. This change was proposed to remove the language for endless belt tracks, and the Panel supported this revision. The new identification is to encompass the other modes of propulsion that may be used and have been approved for other stair-climbing wheelchairs. The new proposed device identification supported by the Panel is, “A stair-climbing wheelchair is a device with wheels that is intended for medical purposes to provide mobility to persons restricted to a sitting position. The device is intended to climb stairs.”

The panelists agreed with the FDA’s list of risks to health from the June 2013 proposed order related to stair-climbing wheelchairs and added suggestions related to pressure sores, bruising, use error, and falls and associated injuries. The Panel expressed concern that the method of sustaining injury for pressure sores and bruising is dramatically different as discussed in this document and recommended that bruising and pressure sores be presented as two separate risks. The Panel also requested an expansion to the description of the use error risk to include users injuring themselves by shifting their position or posture while in the device. Additionally, the Panel asked that subdural hematoma be specifically identified as a clinical risk to health, as a result of the fall. After the Panel, FDA further reviewed the available evidence and noted that skin rash had been identified in the reported adverse events and presented to the Panel. Therefore, FDA has amended the list of risks to include adverse tissue reactions (e.g., rash, irritation). FDA believes this will

be addressed by the existing special control (biocompatibility).

Based upon the Panel’s input and FDA’s review, FDA has updated the risks to the following:

- **Instability:** Instability of the device could result in the device tipping over, slipping off an edge (e.g., curb or stair), or sliding down stairs, or use in certain environmental conditions that minimizes frictional coefficient, may result in injury to the user.

- **Entrapment:** The device may entrap a user or a body part if it moves unintentionally, shifts the user into a position from which they are unable to extricate themselves, or pinches a body part against a solid object.

- **Use error:** A stair-climbing wheelchair may be misused if the user is not properly secured within the seat or if the device is used outside of certain environmental conditions or prescribed step dimensions, structural characteristics. The user could also be positioned in the seat in such a way as to cause injury.

- **Falls and associated injuries:** If the user falls out of the chair or the device falls or rolls over a body part of the user or another individual (e.g., caregiver), it can result in serious injury, including fracture, subdural hematoma, or other injuries.

- **Battery/electrical/mechanical failure:** The device may fail and place the user in an unsafe position (e.g.,

middle of a street intersection, on stairs). This may result from failure of device critical device components (electronics, battery, brakes) or the device changing operational modes unexpectedly.

- **Pressure sores:** Individuals restricted to a wheelchair are at increased risk of pressure sores. Pressure sores develop due to pressure, shear force, friction and a combination of all these factors. Pressure sores may develop due to poor wheelchair position or inadequate pressure relief regimen. Pressure points can cause cell death and a resulting pressure sore. Pressure points are typically found at bony prominences, areas that are squeezed due to a poor fitting wheelchair, or areas with increased pressure such as the sacrum when a person has poor position in the wheelchair.

- **Bruising:** Bruising may result from the user experiencing jarring forces when transitioning over different surfaces or from colliding with solid objects.

- **Burns:** As a result of battery overheating, electrical failure, or ignition of flammable materials, the user may sustain burns.

- **Electric shock:** The user may experience electric shock as a result of battery or electrical failure.

- **Electromagnetic interference:** The device may interfere with the operation of other electrical devices or be

susceptible to interference from other electrical devices.

- **Adverse tissue reaction:** The patient-contacting materials of the device may produce local adverse effects, such as skin rash or irritation.

The Panel found that stair-climbing wheelchairs are not life supporting or life sustaining. The Panel also agreed that FDA’s list of special controls from the June 2013 proposed order would mitigate the risks and provide reasonable assurance of safety and effectiveness for stair-climbing wheelchair devices. Panelists expressed concerns regarding the specificity of the proposed special controls given the potential variations in device designs, environmental conditions, and user abilities. The Panel commented that the special controls for endurance testing are duplicative of the tests outlined in fatigue testing. Panelists agreed that general controls, required for all medical devices, are insufficient to provide a reasonable assurance of safety and effectiveness for stair-climbing wheelchair devices.

FDA agrees with the special control recommendations and has revised the special controls accordingly (see section IV., The Final Order). Table 1 shows how FDA believes that the risks to health identified and listed in this document can be mitigated by the special controls.

TABLE 1—HEALTH RISKS AND MITIGATION MEASURES FOR STAIR-CLIMBING WHEELCHAIR

Identified risk	Mitigation measures
Instability	Performance Testing. Usability Testing. Software Verification and Validation. Design Characteristics. Labeling.
Entrapment	Performance Testing. Usability Testing. Software Verification and Validation. Labeling.
Use Error	Usability Testing. Labeling.
Falls and Associated Injuries	Performance Testing. Usability Testing. Labeling.
Battery/Electrical/Mechanical Failure	Performance Testing. Electrical Safety Testing. Software Verification and Validation. Battery Testing. Labeling.
Pressure Sores	Design Characteristics. Usability Testing. Labeling.
Bruising	Design Characteristics. Usability Testing. Labeling.
Burns	Battery Testing. Flammability Testing. Electrical Safety Testing. Labeling. Battery Testing.
Electrical shock	Battery Testing.

TABLE 1—HEALTH RISKS AND MITIGATION MEASURES FOR STAIR-CLIMBING WHEELCHAIR—Continued

Identified risk	Mitigation measures
Electromagnetic Interference	Electrical Safety Testing. Labeling. Electromagnetic Compatibility Testing. Labeling.
Adverse Tissue Reaction	Biocompatibility Testing.

IV. The Final Order

Under section 513(e) of the FD&C Act, FDA is adopting its findings, in part, as published in the preamble to the proposed order. FDA has made revisions in this final order in response to the comments received (see section II) and the deliberations of the Panel (see section III). As published in the proposed order, FDA is issuing this final order to reclassify stair-climbing wheelchairs from class III to class II and establish special controls by revising § 890.3890 (21 CFR 890.3890). The identification for § 890.3890(a) has been revised to provide a more accurate description of devices in this classification.

In response to the input of the Panel, FDA also made refinements to the proposed special controls. FDA modified the special controls requirements for stair-climbing wheelchair devices including: Endurance testing was removed since it is duplicative of fatigue testing.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the devices. FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness of stair-climbing wheelchair devices, and therefore, this device type is not exempt from premarket notification requirements.

V. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This final order refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and

Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in part 807, subpart E, have been approved under OMB control number 0910–0120; and the collections of information under 21 CFR part 801 have been approved under OMB control number 0910–0485.

VII. Codification of Orders

Prior to the amendments by FDASIA, section 513(e) of the FD&C Act provided for FDA to issue regulations to reclassify devices. Although section 513(e) as amended requires FDA to issue final orders rather than regulations, FDASIA also provides for FDA to revoke previously issued regulations by order. FDA will continue to codify classifications and reclassifications in the Code of Federal Regulations (CFR). Changes resulting from final orders will appear in the CFR as changes to codified classification determinations or as newly codified orders. Therefore, under section 513(e)(1)(A)(i) of the FD&C Act, as amended by FDASIA, in this final order, FDA is revoking the requirements in § 890.3890 related to the classification of stair-climbing wheelchairs as class III devices and codifying the reclassification of stair-climbing wheelchairs into class II.

VIII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at <http://www.regulations.gov>. (FDA has verified all the Web site addresses in this reference section, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. FDA Executive Summary prepared for the December 12, 2013, meeting of the Orthopedic and Rehabilitation Panel (available at: <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/Medical>

DevicesAdvisoryCommittee/Orthopaedic andRehabilitationDevicesPanel/UCM378085.pdf).

2. Petition from Deka Research & Development Corp., October 22, 2012 (Docket No. FDA–2012–P–1155) (available at: <http://www.regulations.gov#!documentDetail;D=FDA-2012-P-1155-0001>).
3. Transcript of the December 12, 2013, meeting of the Orthopedic and Rehabilitation Panel (available at: <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/Orthopaedic andRehabilitationDevicesPanel/UCM381590.pdf>).

List of Subjects in 21 CFR Part 890

Medical devices, Physical medicine devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 890 is amended as follows:

PART 890—PHYSICAL MEDICINE DEVICES

- 1. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

- 2. Section 890.3890 is revised to read as follows:

§ 890.3890 Stair-climbing wheelchair.

(a) *Identification.* A stair-climbing wheelchair is a device with wheels that is intended for medical purposes to provide mobility to persons restricted to a sitting position. The device is intended to climb stairs.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The design characteristics of the device must ensure that the geometry and material composition are consistent with the intended use.

(2) Performance testing must demonstrate adequate mechanical performance under simulated use conditions and environments. Performance testing must include the following:

- (i) Fatigue testing;

(ii) Resistance to dynamic loads (impact testing);

(iii) Effective use of the braking mechanism and how the device stops in case of an electrical brake failure;

(iv) Demonstration of adequate stability of the device on inclined planes (forward, backward, and lateral);

(v) Demonstration of the ability of the device to safely ascend and descend obstacles (i.e., stairs, curb); and

(vi) Demonstration of ability to effectively use the device during adverse temperatures and following storage in adverse temperatures and humidity conditions.

(3) The skin-contacting components of the device must be demonstrated to be biocompatible.

(4) Software design, verification, and validation must demonstrate that the device controls, alarms, and user interfaces function as intended.

(5) Appropriate analysis and performance testing must be conducted to verify electrical safety and electromagnetic compatibility of the device.

(6) Performance testing must demonstrate battery safety and evaluate longevity.

(7) Performance testing must evaluate the flammability of device components.

(8) Patient labeling must bear all information required for the safe and effective use of the device, specifically including the following:

(i) A clear description of the technological features of the device and the principles of how the device works;

(ii) A clear description of the appropriate use environments/conditions, including prohibited environments;

(iii) Preventive maintenance recommendations;

(iv) Operating specifications for proper use of the device such as patient weight limitations, device width, and clearance for maneuverability; and

(v) A detailed summary of the device-related adverse events and how to report any complications.

(9) Clinician labeling must include all the information in the Patient labeling noted in paragraph (b)(8) of this section but must also include the following:

(i) Identification of patients who can effectively operate the device; and

(ii) Instructions on how to fit, modify, or calibrate the device.

(10) Usability studies of the device must demonstrate that the device can be used by the patient in the intended use environment with the instructions for use and user training.

Dated: April 8, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014-08257 Filed 4-11-14; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2014-0189]

Special Local Regulations; Recurring Marine Events in the Seventh Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Conch Republic Navy Parade and Battle Special Local Regulation in the Gulf of Mexico, from 7:00 p.m. until 8:00 p.m. on April 25, 2014. This action is necessary to ensure the safety of event participants, participant vessels, spectators, and the general public from the hazards associated with this event. During the enforcement period, no person or vessel may enter the regulated area without permission from the Captain of the Port.

DATES: The regulations in 33 CFR 100.701 Table 1 will be enforced from 7:00 p.m. until 8:00 p.m. on April 25, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Marine Science Technician First Class Ian G. Bowes, Sector Key West Prevention Department, U.S. Coast Guard; telephone 305-292-8823, email Ian.G.Bowes@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Conch Republic Navy Parade and Battle Special Local Regulation in the Gulf of Mexico in 33 CFR 100.701 on April 25, 2014. These regulations can be found in the 2013 issue of the **Federal Register** 33 CFR 100.701.

On April 25, 2014, Conch Republic Navy LLC. is hosting the Conch Republic Navy Parade and Battle, a boat parade and simulated naval battle event that will take place approximately 150 yards offshore from Ocean Key Sunset Pier, Mallory Square and the Hilton Pier within the Key West Harbor. The event will be held on the waters of the Gulf of Mexico in Key West. Approximately 10 vessels will participate in the event.

The special local regulations encompass certain waters of the Gulf of

Mexico located offshore from the island of Key West. The special local regulations will be enforced from 7:00 p.m. until 8:00 p.m. on April 25, 2014. The special local regulations area will consist of the following area: An event area, where all persons and vessels, except those persons and vessels participating in the swim event, are prohibited from entering, transiting, anchoring, or remaining. The race area is defined as all waters of the Gulf of Mexico encompassed within the following points: Starting at Point 1 in position 24°33'41" N, 81°48'25" W; thence to Point 2 in position 24°33'43" N, 81°48'34" W; thence to Point 3 in position 24°33'32" N, 81°48'38" W; thence to Point 4 in position 24°33'30" N, 81°48'30" W. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area by contacting the Captain of the Port Key West by telephone at 305-292-8727, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area is granted by the Captain of the Port Key West, or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or the designated representative. The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.701 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via a Broadcast Notice to Mariners.

Dated: March 31, 2014.

A.S. Young, Sr.,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2014-08368 Filed 4-11-14; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 117**

[Docket No. USCG–2014–0218]

Drawbridge Operation Regulation; Annisquam River and Blynman Canal, Gloucester, MA**AGENCY:** Coast Guard, DHS.**ACTION:** Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Blynman (SR127) Bridge across the Annisquam River and Blynman Canal, mile 0.0, at Gloucester, Massachusetts. The deviation is necessary to facilitate emergency structural repairs at the bridge. This temporary deviation authorizes the bridge to require a two hour advance notice for bridge openings for six weeks to facilitate emergency repairs at the bridge.

DATES: This deviation is effective without actual notice from April 14, 2014 through May 2, 2014. For the purposes of enforcement, actual notice will be used from March 31, 2014, until April 14, 2014.

ADDRESSES: The docket for this deviation, USCG–2014–0218 is available at <http://www.regulations.gov>. Type the docket number in the “SEARCH” box and click “SEARCH”. Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. John McDonald, Project Officer, First Coast Guard District, telephone (617) 223–8364, email john.w.mcdonald@uscg.mil. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Blynman (SR127) Bridge at mile 0.0, across Annisquam River and Blynman Canal at Gloucester, Massachusetts, has 8.2 feet of vertical clearance at mean high water and 16 feet of vertical clearance at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.586.

The owner of the bridge, Massachusetts Department of Transportation (MDOT), requested a temporary deviation from the schedule to facilitate emergency structural repairs at the bridge. A recent structural inspection revealed structural deterioration of roadway deck stringers at the bridge. As a result of the deterioration emergency vehicles and school busses are prohibited due to weight limitations from passing over the bridge.

The structural repairs to the bridge deck will take approximately six weeks to complete. The bridge owner requested a two hour advance notice for bridge openings to allow the contractor sufficient time to secure the bridge and remove equipment from the bridge in order to provide bridge openings.

The waterway supports commercial and seasonal recreational vessels of various sizes.

Under this temporary deviation the Blynman (SR127) Bridge at mile 0.0, across the Annisquam River and Blynman Canal may require at least a two hour advance notice for bridge openings from March 31, 2014 through May 2, 2014. Requests for bridge openings may be made by calling the number (978) 283–0243, posted at the bridge.

There is an alternate route for vessel traffic to take around Cape Ann, at Gloucester, should mariners not desire to provide the requested two hour advance notice for bridge openings.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: March 27, 2014.

C.J. Bisignano,
Supervisory Bridge Management Specialist,
First Coast Guard District.

[FR Doc. 2014–08237 Filed 4–11–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 117**

[Docket No. USCG–2014–0035]

Drawbridge Operation Regulation; St. Croix River, Stillwater, MN**AGENCY:** Coast Guard, DHS.**ACTION:** Notice of deviation from drawbridge regulation; request for comments.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Stillwater Highway Drawbridge across the St. Croix River, mile 23.4, at Stillwater, Minnesota. The deviation was requested by the City of Stillwater to perform a functional review of drawspan operation needs during the navigation season due to growing traffic congestion. This deviation will test an altered opening schedule operated Monday through Friday (Except Federal Holidays) for approximately 5 months.

DATES: This deviation is effective from May 15, 2014 through October 15, 2014. Comments and related material must be received by the Coast Guard on or before July 15, 2014. A public meeting will be held April 16, 2014.

ADDRESSES: You may submit comments identified by docket number USCG–2014–0035 using any one of the following methods:

(1) *Federal eRulemaking Portal:*
<http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. To avoid duplication, please use only one of these methods. The public meeting will be held at the City of Stillwater Council Chambers Meeting Room, 216 North Forth Street, Stillwater, Minnesota.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone

(314) 269-2378, email Eric.Washburn@uscg.mil. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

A. Public Participation and Request for Comments

We encourage you to provide input and feedback during this temporary deviation by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this deviation (USCG-2014-0035), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, type the docket number (USCG-2014-0035) in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this deviation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change or cancel this deviation based on your comments.

2. Viewing Comments and Document

To view comments, as well as document mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number (USCG-2014-0035) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

A public meeting explaining the details and altered schedule for this deviation will be held April 16, 2014, at 6 p.m. in the City of Stillwater Council Chambers Meeting Room, 216 North Forth Street, Stillwater, Minnesota. This public meeting has also been noticed to the public through local avenues. We plan to record this meeting via audio and will upload a transcript for the meeting to the docket, which is accessible as explained under **ADDRESSES**. For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact the person listed above under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

The City of Stillwater, Minnesota, requested a temporary deviation for the Stillwater Highway Drawbridge, across the St. Croix River, mile 23.4, at Stillwater, Minnesota. The existing operating schedule for this bridge was established approximately 20 years ago. This deviation is intended to test the operational needs of this drawbridge due to changes and growing congestion in the area. This deviation is temporary for the 2014 navigation season only. A new bridge in the area is planned to be completed in 2016 and the Stillwater Highway Bridge would then be altered to a pedestrian only bridge. Comments received in response to and the effects of this deviation will be taken into consideration both during the 2015 navigation season and in preparation for changes that may be necessary in 2016.

The temporary deviation will occur from May 15 through October 15, 2014,

and the bridge will open on signal Monday through Friday, except Federal Holidays from:

- (i) 8 a.m. to 1 p.m., every hour on the hour;
- (ii) 1 p.m. to 3 p.m., every half hour;
- (iii) 3:30 p.m. to 7 p.m., at 4 p.m., 6 p.m. and 7 p.m.;
- (iv) 7 p.m. to 10 p.m., every half hour; and
- (v) 10 p.m. to 8 a.m., upon at least two hours notice.

The Stillwater Highway Drawbridge currently operates in accordance with 33 CFR 117.667(b), which states specific seasonal and commuter hours operating requirements.

There are no alternate routes for vessels transiting this section of the St. Croix River.

The Stillwater Highway Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 10.9 feet above normal pool. Navigation on the waterway primarily consists of commercial sightseeing/dinner cruise boats and recreational watercraft. This temporary deviation has been coordinated with waterway users. One objection to this deviation was received and will be available in the docket as indicated under **ADDRESSES**. This objection will also be presented at the public meeting on April 16. This deviation action will be monitored throughout its implementation, and if at any time it is determined a condition of unreasonable impediment to navigation exists, the deviation may be revised or cancelled.

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

Dated: April 1, 2014.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2014-08263 Filed 4-11-14; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2014-0143]

Drawbridge Operation Regulations; Annisquam River and Blynman Canal, Gloucester, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the schedule governing the operation of the Blynman (SR127) Bridge across the Annisquam River and Blynman Canal, mile 0.0, at Gloucester, Massachusetts. The deviation is necessary to facilitate public safety during a public event, the annual Saint Peter's Fiesta 5K Road Race. This temporary deviation authorizes the bridge to remain in the closed position for thirty minutes to facilitate public safety.

DATES: This deviation is effective from 6:15 p.m. to 6:45 p.m. on June 26, 2014.

ADDRESSES: The docket for this deviation [USCG-2014-0143] is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12-140, on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. John W. McDonald, Project Officer, First Coast Guard District, telephone (617) 223-8364 or email john.w.mcdonald@uscg.mil. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION: The Blynman (SR127) Bridge at mile 0.0, across the Annisquam River and Blynman Canal at Gloucester, Massachusetts, has 8.2 feet of vertical clearance at mean high water and 16 feet of vertical clearance at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.586.

The owner of the bridge, Massachusetts Department of Transportation, requested a temporary deviation from the schedule to facilitate a public event, the Annual Saint Peter's Fiesta 5K Road Race.

The waterway has recreational vessel traffic of various sizes.

Under this temporary deviation the Blynman (SR127) Bridge at mile 0.0, across the Annisquam River and Blynman Canal may remain in the closed position for thirty minutes, between 6:15 p.m. and 6:45 p.m. on June 26, 2014. Vessels that can pass

under the bridge without a bridge opening may do so at all times. There is an alternate route for vessel traffic around Cape Ann.

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

Dated: April 1, 2014.

C.L. Bisignano,

*Supervisory Bridge Management Specialist,
First Coast Guard District.*

[FR Doc. 2014-08241 Filed 4-11-14; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2014-0203]

Drawbridge Operation Regulation; Narrow Bay, Suffolk County, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Smith Point Bridge across Narrow Bay, mile 6.1, between Smith Point and Fire Island, New York. The deviation is necessary to facilitate public safety during a public event, the Mastic Peninsula Multi-Sport Triathlon. This temporary deviation authorizes the Smith Point Bridge to remain in the closed position for two hours to facilitate public safety during a public event.

DATES: This deviation is effective from 7 a.m. through 9 a.m. on June 1, 2014.

ADDRESSES: The docket for this deviation, USCG-2014-0203 is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 668-7165, email judy.k.leung-yee@uscg.mil. If you

have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION: The Smith Point Bridge at mile 6.1, across Narrow Bay, between Smith Point and Fire Island, New York, has 18 feet of vertical clearance at mean high water and 19 feet of vertical clearance at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.799(d).

The owner of the bridge, the County of Suffolk Department of Public Works, requested a temporary deviation from the drawbridge operation regulations to facilitate a public event, the Mastic Peninsula Multi-Sport Triathlon.

The waterway has seasonal recreational vessels traffic of various sizes.

Under this temporary deviation the Smith Point Bridge at mile 6.1, across Narrow Bay between Smith Point and Fire Island, New York, may remain in the closed position from 7 a.m. through 9 a.m. on June 1, 2014.

Vessels able to pass under the bridge in the closed position without a bridge opening may do so at all times. There are no alternate routes for vessels to transit.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: April 1, 2014.

C.J. Bisignano,

*Supervisory Bridge Management Specialist,
First Coast Guard District.*

[FR Doc. 2014-08242 Filed 4-11-14; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-0727]

RIN 1625-AA11

Regulated Navigation Area; Arthur Kill, NY and NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is extending the Regulated Navigation Area promulgated for the navigable waters of the Arthur Kill in New York and New Jersey. This rule extends the Regulated Navigation Area until June 1, 2014, due to project delays.

DATES: This rule is effective without actual notice from April 14, 2014 until June 1, 2014. For the purposes of enforcement, actual notice will be used from the date the rule was signed, March 31, 2014, until June 1, 2014. Public comments will be accepted and reviewed by the Coast Guard through June 1, 2014.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2011–0727. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on “Open Docket Folder” on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may submit comments, identified by docket number, using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Craig D. Lapiejko, Coast Guard First District Waterways Management Branch, telephone 617–223–8385, email craig.d.lapiejko@uscg.mil or, Mr. Jeff Yunker, U.S. Coast Guard Sector New York Waterways Management Division, Coast Guard; telephone 718–354–4195, email

Jeff.M.Yunker@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
RNA Regulated Navigation Area

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

The Coast Guard will evaluate and revise this rule as necessary to address significant public comments. Alternatively, if the dredging project necessitating the interim rule is completed before June 1, 2014, and we receive no public comments that indicate a substantive need to revise the rule, we may allow it to expire on that date without further regulatory action.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0727), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on “Submit a Comment” on the line associated with

this rulemaking. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG–2013–0329) in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We currently do not plan to hold a public meeting. You may, however, submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid in this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

This temporary interim rule (TIR) is the third to address the RNA in the Arthur Kill. We first published this regulated navigation area on August 23, 2011 (75 FR 52569) and amended it amended it on January 9, 2012 (76 FR 1023). No comments have been received on the rules that have addressed this topic.

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment

pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable, as it is necessary to protect the safety of both the construction crew and the waterway users operating in the vicinity of the Arthur Kill. A delay or cancellation of the currently ongoing project in order to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the date when the channel is expected to reopen for normal operations. The Coast Guard will consider comments in issuing a subsequent temporary interim rule or temporary final rule which allows further time to complete channel work needed in the RNA without interruption.

For the same reasons mentioned above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

C. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this rule is to ensure the safe transit of vessels in the area and to protect all persons, vessels, and the marine environment during the ongoing channel deepening project by extending the effective date of this rule.

D. Discussion of Comments and Changes

The completion date for this project needs to be extended due to additional work being conducted near the center of the channel. As such we are extending the effective from April until June to allow adequate time for the completion of the project.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and

executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking will not be a significant regulatory action for the following reasons: Vessel traffic will only be restricted from the RNA for limited durations and the RNA covers only a small portion of the navigable waterway. Advanced public notifications will also be made to local mariners through appropriate means, which could include, but would not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter or transit within the RNA during a vessel restriction period.

The RNA would not have a significant economic impact on a substantial number of small entities for the following reasons: The RNA would be of limited size and any waterway closure of short duration. Additionally before the effective period of a waterway closure, advanced public notifications will be made to local mariners through appropriate means, which could include, but would not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it

qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National

Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves restricting vessel movement within a regulated navigation area. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination supporting this determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01-0727 to read as follows:

§ 165.T01-0727 Regulated Navigation Area; Arthur Kill, NY and NJ.

(a) *Regulated Area.* The following area is a regulated navigation area: All waters of the North of Shooters Island Reach, Elizabethport Reach, and Gulfport Reach in the Arthur Kill; bounded in the northeast by a line drawn from position 40°38'48.637" N, 074°09'18.204" W; to a point in position 40°38'37.815" N, 074°09'20.245" W; and bounded in the southwest by a line drawn from position 40°37'15.643" N, 074°12'15.927" W; to a point in position 40°37'15.779" N, 074°12'08.0622" W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.13 apply.

(2) All vessels must remain at least 150 feet from all drilling and blasting equipment; if a vessel must pass within 150 feet of drilling and blasting equipment for reasons of safety, they

shall contact the dredge and/or blasting barge on Channel 13.

(3) No vessel shall enter or transit any work area where drill barges and/or dredges are located without the permission of Vessel Traffic Service New York (VTSNY) Director.

(4) No vessel may be underway within 1,500 feet of the blasting area during blasting operations.

(5) No vessel shall enter an area of drilling or blasting when they are advised by the drilling barge or VTSNY that a misfire or hang fire has occurred.

(6) Vessel Movement Reporting System (VMRS) users are prohibited from meeting or overtaking other vessels when transiting alongside an active work area where dredging and drilling equipment are being operated.

(7) Each vessel transiting in the vicinity of a work area where dredges are located is required to do so at reduced speed to maintain maneuverability while minimizing the effects of wake and surge.

(8) The VTSNY Director may impose additional requirements through VTS measures, as per 33 CFR 161.11.

(c) *Effective Period.* This rule is effective from 8 a.m. on March 31, 2014 until 5 p.m. on June 1, 2014.

Dated: March 31, 2014.

D.B. Abel,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2014-08218 Filed 4-11-14; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0158]

RIN 1625-AA00

Safety Zone; Bat Mitzvah Celebration Fireworks Display; Joshua Cove; Guilford, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Joshua Cove near Guilford, CT for the Bat Mitzvah Celebration fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. Entering into, transiting through, remaining, anchoring or mooring within this regulated area would be prohibited unless authorized by the Captain of the Port (COTP) Sector Long Island Sound.

DATES: This rule is effective on May 10, 2014. This rule will be enforced from 8:30 p.m. to 10:30 p.m. on May 10, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0158]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Scott Baumgartner, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468–4559, Scott.A.Baumgartner@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain of the Port
 DHS Department of Homeland Security
 FR Federal Register
 LIS Long Island Sound
 NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because an NPRM would be impracticable. The Coast Guard received information regarding the fireworks display from the event sponsor on February 12, 2014. Consequently, the Coast Guard did not have enough time to draft, publish, and receive public comment on this rulemaking via an NPRM and still publish a final rule before the event was scheduled to take place. Delaying this

rulemaking by waiting for a comment period to run would also reduce the Coast Guard’s ability to promote the safety of event participants and the maritime public during this event.

Under 5 U.S.C. 553(d)(3) and for the same reasons as stated above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

B. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1226, 1231, 1233; 46 U.S.C. Chapters 454, 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1 which collectively authorize the Coast Guard to define regulatory special local regulations and safety zones.

This temporary rule establishes a safety zone in order to provide for the safety of life on navigable waterways during the Bat Mitzvah Celebration Fireworks display in Joshua Cove near Guilford, CT.

C. Discussion of the Final Rule

This temporary rule establishes a safety zone for the Bat Mitzvah Celebration Fireworks display. The Bat Mitzvah Celebration Fireworks display may attract large numbers of spectator vessels that will congregate around the event location. The safety zone established for this fireworks display is needed to protect both spectators and participants from the safety hazards created by it, including unexpected pyrotechnics detonation and burning debris.

This rule prevents vessels from entering, transiting, mooring or anchoring within areas specifically designated as regulated areas during the periods of enforcement unless authorized by the COTP or designated representative.

The Coast Guard has determined that this regulated area will not have a significant impact on vessel traffic due to its temporary nature, limited size, and the fact that vessels are allowed to transit the navigable waters outside of the regulated area. The COTP will cause public notifications to be made by all appropriate means including but not limited to the Local Notice to Mariners and Broadcast Notice to Mariners.

D. Regulatory Analyses

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

based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons: The regulated area will be of limited duration and cover only a small portion of the navigable waterways. Furthermore, vessels may transit the navigable waterways outside of the regulated area. Vessels requiring entry into the regulated area may be authorized to do so by the COTP or designated representative.

Advanced public notifications will also be made to the local maritime community by the Local Notice to Mariners as well as Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulated area will be of limited size and of short duration, and vessels that can safely do so may navigate in all other portions of the waterways except for the areas designated as a regulated area. Additionally, notifications will be made before the effective period by all appropriate means, including but not limited to the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the events.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one

of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREA AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–0158 to read as follows:

§ 165.T01–0158 Safety Zone; Bat Mitzvah Celebration Fireworks Display; Joshua Cove; Guilford, CT.

(a) *Location.* The following area is a safety zone: All waters of Joshua Cove near Guilford, CT within a 600-foot radius of the fireworks barge located in approximate position 41°15'06.62" N, 072°42'48.08" W (NAD 83).

(b) *Enforcement Period.* This rule will be enforced from 8:30 p.m. until 10:30 p.m. on May 10, 2014.

(c) *Regulations.* The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entering into, transiting through, remaining, mooring or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port (COTP) or the designated representative.

(1) Definitions. The following definitions apply to this section:

(i) Designated Representative. A “designated representative” is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector Long Island Sound, to act on his or her behalf. The designated representative

may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(ii) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound.

(iii) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(2) Spectators desiring to enter or operate within the regulated area should contact the COTP Sector Long Island Sound at 203-468-4401 (Sector LIS command center) or the designated representative via VHF channel 16 to obtain permission to do so. Spectators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP Sector Long Island Sound or the designated on-scene representative.

(3) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(4) Fireworks barges used in this location will have a sign on their port and starboard side labeled "FIREWORKS—STAY AWAY". This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background.

Dated: March 25, 2014.

E.J. Cubanski, III,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2014-08222 Filed 4-11-14; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-1045]

RIN 1625AA00

Safety Zone; Military Munitions Recovery, Raritan River, Raritan, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone

within the waters of the Raritan River upstream of the Perth Amboy Railroad Bridge. This safety zone is necessary to provide for the protection of the maritime public and safety of navigation during removal of underwater explosive hazards in the Raritan River. This action will protect the public from the dangers posed by underwater explosives by restricting unauthorized persons and vessels from traveling through or conducting underwater activities within a portion of the Raritan River while military munitions are rendered safe, detonated, and/or removed from the area. Entry into this zone (as well as a broad array of other actions) will be prohibited within the safety zone unless authorized by the Captain of the Port New York or the designated on-scene representative.

DATES: This rule is effective May 14, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-1045]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Hannah Eko, U.S. Coast Guard, Sector New York, Waterways Management Division, telephone (718) 354-4114, email Hannah.O.Eko@uscg.mil or BMC Craig Lapeijko, Coast Guard First District Waterways Management Branch, telephone (617) 223-8381, email craig.d.lapeijko@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
USACE United States Army Corps of Engineers

A. Regulatory History and Information

On September 19, 2013 the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; Military Munitions Recovery, Raritan River, Raritan, NJ" in the **Federal Register** (78 FR 57567). We received 0 comments on the NPRM.

B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Public Law 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1., which collectively authorize the Coast Guard to establish safety zones.

The purpose of this rule is to protect vessel traffic from the dangers of underwater explosives by restricting unauthorized persons and vessels from traveling through or conducting underwater activities within a portion of the Raritan River while military munitions are rendered safe, detonated, or removed from the area. The United States Corps of Army Engineers (USACE) is conducting a remedial investigation within the Raritan River using advanced metal detection, removal, and detonation techniques. The prior start date of spring 2013 was delayed by application reviews and is now scheduled to begin in the spring of 2014.

C. Discussion of Comments, Changes, and the Final Rule

No comments were received concerning this rule.

The Coast Guard will establish a safety zone encompassing all navigable waters of the Raritan River upstream of the Perth Amboy Railroad Bridge to ensure the safety of mariners and vessels around the military munitions removal area.

These safety zones will be enforced while on-scene workers are retrieving military munitions that could pose a hazard to persons or vessels operating in the area. Each military munitions retrieval is expected to require the activation of the safety zone for a minimum of 60 minutes. Intended work hours (subject to change) are 6:00 a.m. through 6:00 p.m., Monday through Friday. The USACE will provide notice of the activation of the safety zone via vessels stationed at the eastern and western boundaries of the safety zone. These vessels will have flashing yellow lights to alert mariners to their presence and that the safety zone is being enforced.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this rule would restrict access to a small portion of the Raritan River until military munitions are rendered safe and removed, the effect of this regulation would not be significant due to the following reasons: The safety zone will cover only a small portion of the navigable waters within the Raritan River during limited intervals of time. We expect portions of the safety zone to be activated for short period while the military munitions are being removed or detonated. In addition, vessels may be authorized to enter the zone with permission of the COTP.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit, fish, dive, or anchor in a portion of the Raritan River upstream of the Perth Amboy Railroad Bridge during the time the safety zone is activated.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone

will only be activated for limited periods of time while the USACE is retrieving or detonating military munitions. Vessel traffic will be minimal because the location of the safety zone is in an area that does not experience high volumes of vessel traffic, with typical commercial traffic being very minimal. Upstream recreational vessel entities will be contacted concerning this safety zone. Before the activation of the zone, maritime advisories will be issued and widely available to users of the waterway in the vicinity of the Raritan River.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes,

or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This rule is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone in a portion of the Raritan River. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.170 to read as follows:

§ 165.170 Safety Zone; Military Munitions Recovery, Raritan River, Raritan, NJ.

(a) *Location.* The following area is a safety zone: All navigable waters of the

Raritan River upstream of the Perth Amboy Railroad Bridge, which spans the waterway at approximately 40°29'46.3" N, 74°16'51.5" W.

(b) *Definitions.* The following definitions apply to this section:

(1) “Designated representative” means any U.S. Army Corps of Engineers personnel, any commissioned, warrant, or petty officer of the U.S. Coast Guard, and any member of the Coast Guard Auxiliary who has been designated by the Captain of the Port New York (COTP), to act on his or her behalf. As a designated representative, the U.S. Army Corps of Engineers official patrol vessel will communicate with vessels via VHF–FM radio or loudhailer.

(2) “Official patrol vessel” means any Coast Guard, Coast Guard Auxiliary, Army Corp of Engineers, state, or local law enforcement vessels assigned or approved by the COTP.

(c) *Regulations.* (1) The general regulations in 33 CFR 165.23 apply.

(2) Entry, transit, diving, dredging, dumping, fishing, trawling, conducting salvage operations, remaining or anchoring within the safety zone described in paragraph (a) of this section is prohibited unless authorized by the COTP.

(3) Upon being hailed by a U.S. Coast Guard vessel, U.S. Army Corps of Engineers vessel or a designated representative, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter, transit, dive, dredge, dump, fish, trawl, conduct salvage operations, remain within or anchor within the safety zone must contact the COTP or a designated representative via VHF channel 16 or by phone at (718) 354–4353 (Sector New York Command Center) to request permission.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative.

Dated: March 28, 2014.

G. Loebel,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2014–08247 Filed 4–11–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0014]

RIN 1625–AA00

Safety Zone; Pago Pago Harbor, American Samoa

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for Pago Pago Harbor, American Samoa during the April 17, 2014 Fautasi Race. This action is necessary for the safeguard of participants and spectators, including all crews, vessels, and persons on the navigable waters during the Fautasi Races (canoe boat races) that will occur in Pago Pago Harbor. This safety zone will functionally close the port to vessel traffic during the race, but will not require the evacuation of any vessels from the harbor. Entry into, transiting or anchoring in this safety zone is prohibited to all vessels not registered with the sponsor as participants or not part of the race patrol, unless specifically authorized by the Captain of the Port Honolulu or a designated representative.

DATES: This safety zone is effective from 7:30 a.m. to 8:30 a.m. (SST) on April 17, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2014–0014. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Scott Whaley of the United States Coast Guard Sector Honolulu at 808–541–4359 or Scott.O.Whaley@uscg.mil, respectively. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
TFR Temporary Final Rule
COTP Captain of the Port

A. Regulatory History and Information

The Coast Guard is establishing this TFR without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The specific details of the Fautasi Race were not determined until less than a month before the race was scheduled to be held. Due to the need to restrict vessel traffic during the race, in order to protect the participants, spectators, Marine Patrol and the race officials, a 30-day notice period is impracticable. The Captain of the Port (COTP) Honolulu finds that this safety zone is required on April 17, 2014, to ensure the safety of the participants, spectators, Marine Patrol and the race officials.

B. Basis and Purpose

The statutory basis for this rulemaking is 33 U.S.C. 1231, which gives the Coast Guard, under a delegation from the Secretary of Homeland Security, regulatory authority to implement the Ports and Waterways Safety Act. A safety zone is a water area, shore area, or water and shore area, for safety or environmental purposes, access is limited to authorized persons, vehicles, or vessels.

The purpose of this rule is to minimize vessel traffic during the Fautasi canoe race. This race is a hugely popular event attended by a vast majority of American Samoa residents and is sponsored by American Samoa Government. This event is expected to draw a large number of pleasure craft, posing a significant hazard to both vessels and mariners operating in or near the area. The COTP Honolulu is establishing a safety zone for Pago Pago Harbor to accommodate these events and to safeguard persons and vessels during the canoe boat race. The legal basis and authorities for this temporary final rule are found in 33 U.S.C. 1231 and 33 CFR part 165, which authorizes the Coast Guard to propose, establish, and define safety zones. The COTP

anticipates minimal impact on vessel traffic due to this safety zone. However, the safety zone is deemed necessary for the safeguard of life and property within the safety zone.

C. Discussion of the Rule

This rule creates a safety zone for Pago Pago Harbor. The Coast Guard is banning the transit of all commercial vessel through the harbor that are not authorized by the COTP or a designated support or enforcement vessel for the event, effectively closing the port for commercial vessels. The harbor will remain closed until the Coast Guard issues an “All Clear” for the harbor after the race has concluded the harbor is deemed safe for normal operations. This temporary rule does not require any vessel to evacuate the port if moored; it only bans the transit through the zone during the aforementioned times. An illustration of the safe zone is available in the online docket.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The expected short duration and impact of the rule ensures it will not rise to the level a significant regulatory action.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit, anchor or moor within Pago Pago Harbor American Samoa between 7:30 a.m. and 8:30 a.m. (SST) on April 17, 2014.

This safety zone would not have a significant economic impact on a

substantial number of small entities for the following reasons: This safety zone is of limited duration and intended to protect Pago Pago Harbor for continued use by these small entities and others following the completion of the canoe race. Once the race has concluded, the safety zone will be cancelled allowing vessels to transit the harbor in accordance with already established regulations.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to

coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. *Taking of Private Property*

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. *Civil Justice Reform*

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. *Protection of Children*

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. *Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. *Energy Effects*

This action is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. *Technical Standards*

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. *Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the closure of the port to all traffic. This rule is categorically excluded from further review under paragraph 34g of Figure 2–1 of the Commandant Instruction.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T14–0014 to read as follows:

§ 165.T14–0014 Safety Zone; Pago Pago Harbor, America Samoa.

(a) *Location.* The following area is a safety zone: All waters encompassed by a line starting at Breakers Point (eastern edge of Pago Pago Harbor entrance) thence southeast to 14° 18'47" S, 170° 38'54.5" W thence southwest to 14° 19'03" S, 170° 39'14" W, thence northwest to Tulutulu Point and then following the Pago Pago Harbor coastline back to the point of origins. This safety zone extends from the surface of the water to the ocean floor.

(b) *Enforcement period.* This section will be enforced from 7:30 a.m. to 8:30 a.m. (SST) on April 17, 2014.

(c) *Regulations.* (1) All persons and vessels not registered with the sponsor as participants or support/enforcement vessels are considered spectators. The “support/enforcement vessels” consist of any territory, or local law enforcement and sponsor provided vessels assigned or approved by the COTP Honolulu to patrol the safety zone.

(2) No spectator shall anchor, block, loiter or impede the transit of participants or support/enforcement vessels in the safety zone while this section is effective, unless cleared by or through a support/enforcement vessel.

(3) Spectator vessels may be moored to a waterfront facility within the safety zone in such a way that they shall not interfere with the progress of the events. Such mooring must be complete at least 30 minutes prior to the effective period of this section and remain moored through the duration of the events.

(d) *Informational Broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule. Once the zone is being enforced, due to the commencement of the race, transiting, anchoring, and loitering in the harbor is forbidden and the harbor will remain closed until 8:30 a.m., or earlier if the Coast Guard issues an “All Clear” after the race has concluded and the harbor is deemed safe for normal operations.

Dated: March 25, 2014.

S.N. Gilreath,

Captain, U.S. Coast Guard, COTP Honolulu.

[FR Doc. 2014–08240 Filed 4–11–14; 8:45 am]

BILLING CODE 9110–04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0156]

RIN 1625–AA00

Eighth Coast Guard District Annual Safety Zones; Pittsburgh Pirates Fireworks; Allegheny River Mile 0.4 to 0.6; Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Pittsburgh Pirates Fireworks on the Allegheny River, from mile 0.4 to 0.6, extending the entire width of the river. This zone will be in effect on April 5, April 19, May 10, June 26, July 19, August 9, and September 20, 2014 from 9 p.m. until 11 p.m. This zone is needed to protect vessels transiting the area and event spectators from the hazards associated with the Pittsburgh Pirates Barge-based Fireworks. During the enforcement period, entry into, transiting, or

anchoring in the safety zone is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels, unless specifically authorized by the Captain of the Port (COTP) Pittsburgh or a designated representative.

DATES: The regulations in 33 CFR 165.801 will be enforced with actual notice on April 5, April 19, May 10, June 26, July 19, August 9, and September 20, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call or email Ronald Lipscomb, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone (412) 644-5808, email Ronald.c.lipscomb1@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone for the annual Pittsburgh Pirates Fireworks listed in 33 CFR 165.801 Table 1, Table No. 152; Sector Ohio Valley, No. 11 on August 22, 2012.

Under the provisions of 33 CFR 165.801, entry into the safety zone listed in Table 1, Table No. 152; Sector Ohio Valley, No. 11 is prohibited unless authorized by the Captain of the Port or a designated representative. Persons or vessels desiring to enter into or passage through the safety zone must request permission from the Captain of the Port Pittsburgh or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh or designated representative.

This notice is issued under authority of 5 U.S.C. 552 (a); 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1. In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Local Notice to Mariners and updates via Marine Information Broadcasts.

If the Captain of the Port Pittsburgh or designated representative determines that the Safety Zone need not be enforced for the full duration stated in this notice of enforcement, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: March 18, 2014.

L.N. Weaver,

Commander, U.S. Coast Guard, Captain of the Port, Pittsburgh.

[FR Doc. 2014-08382 Filed 4-11-14; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 177

[Docket No. USCG-2013-0216]

RIN 1625-AC01

Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard finalizes regulations previously published as an interim rule on July 9, 2013. In this final rule, the Coast Guard removes the wave height and surface current provisions and regulated boating areas for bar crossing locations along the coasts of Oregon and Washington because they conflict with more recently promulgated wave height provisions and regulated boating areas for the same bar crossings. This amendment is necessary in order to remove confusion as to which safety requirements apply to recreational vessels, uninspected passenger vessels, small passenger vessels, and commercial fishing vessels when operating within the regulated navigation areas.

DATES: This final rule is effective May 14, 2014.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2013-0216 and are available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, 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. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2013-0216 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, email or call Mr. Burt Lahn, U.S. Coast Guard Office of Navigation Standards (CG-NAV-3), email Burt.A.Lahn@uscg.mil, telephone 202-372-1526. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

II. Regulatory History and Information

III. Basis and Purpose

IV. Discussion of the Final Rule

V. Discussion of Comments on the Interim Rule

VI. Regulatory Analyses

A. Regulatory Planning and Review

B. Small Entities

C. Assistance for Small Entities

D. Collection of Information

E. Federalism

F. Unfunded Mandates Reform Act

G. Taking of Private Property

H. Civil Justice Reform

I. Protection of Children

J. Indian Tribal Governments

K. Energy Effects

L. Technical Standards

M. Environment

I. Abbreviations

CFR Code of Federal Regulations

DHS Department of Homeland Security

FR Federal Register

NPRM Notice of Proposed Rulemaking

NTSB National Transportation Safety Board

RNA Regulated Navigation Area

U.S.C. United States Code

II. Regulatory History and Information

The bars along the coasts of Oregon and Washington are a maritime operating environment unique to the Pacific Northwest. Bars are commonly defined as areas of shallow water that lead into rivers and bays. At times, bars become extremely hazardous for vessels to navigate due to strong currents and large waves that can form when strong ocean currents pass over the bars. Until 2009, the bars along the coast of Oregon and Washington were regulated in 33 CFR Part 177. On February 12, 2009, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (74 FR 7022) that proposed to establish Regulated Navigation Areas (RNAs) in 33 CFR 165.1325 for bars along the coasts of Oregon and Washington. RNAs are areas of water within a defined boundary that, for reasons of safety or environmental concerns, the Coast Guard has implemented regulations on the operation of vessels permitted inside the defined area. The proposals in the NPRM were designed to help ensure the safety of persons and vessels operating on or in the vicinity of the bars. The Coast Guard subsequently published a final rule in the **Federal Register** on November 17, 2009 (74 FR 59098), adopting most of the NPRM's proposals.

Certain provisions in that 2009 final rule superseded other provisions in Part 177 that governed bar crossing along the coasts of Oregon and Washington. Specifically, 33 CFR 165.1325(a) sets forth the specific locations for the RNAs that cover the bars along the Oregon and Washington coasts, and supersedes the

regulated boating areas in 33 CFR 177.08. Additionally, 33 CFR 165.1325(b)(13) defines the term *unsafe condition* to include certain wave height conditions, and supersedes the unsafe wave height formula and surface current provisions in 33 CFR 177.07(f). The purpose of this final rule is to remove those superseded provisions from the CFR.

As discussed in the 2009 NPRM, the Coast Guard determined that the wave height and surface current provisions in 33 CFR 177.07(f), and the regulated boating areas in 33 CFR 177.08, did not provide a sufficient measure of safety for persons and vessels operating in those areas. In addition, multiple Coast Guard and National Transportation Safety Board (NTSB) accident investigations indicated a need for additional regulations to mitigate the risks associated with the bars and to enhance the safety of the persons and vessels operating on and in the bars' vicinity.

Because the 2009 amendments to 33 CFR 1625.1325(a) and 1625.1325(b)(13) superseded the provisions in 33 CFR 177.07(f) and 177.08 specific to the wave height and surface current provisions and regulated boating areas for bar crossing locations along the coasts of Oregon and Washington, the Coast Guard, on July 9, 2013, issued an Interim Rule with request for comments (78 FR 40963) for the purpose of removing the superseded provisions in 33 CFR 177.07(f) and 177.08. In that Interim Rule, we explained that it was necessary to remove the wave height and surface current provisions contained in 33 CFR 177.07(f) and 177.08 specific to bar crossings along the coasts of Oregon and Washington because they conflict with the more recently promulgated regulations in 33 CFR 1625.1325. This rule finalizes the 2013 interim rule with no changes.

III. Basis and Purpose

Under 46 U.S.C. 4302, the Coast Guard is authorized to establish regulations to promulgate minimum safety standards and procedures for recreational vessels. Under 46 U.S.C. 4105(a), uninspected passenger vessels are also subject to Chapter 43 of Title 46, U.S. Code.

This rulemaking is necessary in order to remove the wave height and surface current provisions under 33 CFR 177.07(f) and the geographic coordinates in 33 CFR 177.08 that have been superseded by 33 CFR 165.1325, to eliminate confusion regarding which provisions apply specifically to the bars along the coasts of Oregon and Washington. The regulations in 33 CFR

165.1325 establish clear procedures for restricting and/or closing the bars as well as mandating additional safety requirements for recreational and uninspected commercial vessels operating on or in the vicinity of the bars, when certain conditions exist. The RNAs established in 33 CFR 165.1325 help to expedite bar restrictions and closures and include a mariner notification process that helps keep vessels away from hazardous bars. The RNAs also require the use and/or making ready of safety equipment, as well as additional reporting requirements when certain conditions exist, which help safeguard the persons and vessels that operate on or in the vicinity of hazardous bars.

IV. Discussion of the Final Rule

Certain provisions of 33 CFR part 177, governing maritime traffic operating on and in the vicinity of the bars along the coasts of Oregon and Washington, provide insufficient safety measures for the persons and vessels that operate in those areas. As discussed in the February 12, 2009 NPRM (74 FR 7022), multiple Coast Guard and NTSB casualty investigations indicated a need for additional regulations to mitigate the risks associated with the bars and to enhance the safety of the persons and vessels operating on and in the bars' vicinity. To fulfill this need, in 2009, the Coast Guard established the RNAs in 33 CFR 165.1325.

The provisions in 33 CFR 165.1325 establish an increased measure of safety and supersede the existing provisions in 33 CFR 177.07(f) and 177.08. Accordingly, the Coast Guard, through this rule, removes the wave height provisions in 33 CFR 177.07(f)(1) and (2), the surface current provision in 33 CFR 177.07(f)(3), and the regulated boating areas in 33 CFR 177.08.

V. Discussion of the Comments on the Interim Rule

The Coast Guard received one comment on the interim rule. The commenter stated that the interim rule does not explain what specific changes are being made or how they are more protective than the existing regulations, and requested a table showing the difference between the existing regulations and the new language. Such a table, the commenter suggests, would make this rulemaking action more useful and would also increase the transparency of the Coast Guard's actions.

The Coast Guard reviewed the published interim rule. We do not agree that the interim rule fails to explain the specific changes effectuated by the rule.

In the interim rule, the Coast Guard explained that the wave height and surface current restrictions in 33 CFR 177.07(f) and the geographic coordinates in 33 CFR 177.08 were in conflict with, and had been superseded by, the more recently promulgated regulations in 33 CFR 165.1325 (promulgated in a final rule in 2009, 74 FR 59098, after notice and comment on the proposed rule, 74 FR 7022). The Coast Guard further explained that the rulemaking is necessary in order to remove the provisions in 33 CFR 177.07(f) and 177.08 that conflict with 33 CFR 165.1325, and thereby remove confusion regarding which provisions apply specifically to the bars along the coasts of Oregon and Washington. Further, it is worth emphasizing that this rulemaking is not adding new regulatory provisions. For these reasons, we do not believe adding a table is necessary in order to understand the effect of this rule, nor would it add clarity to the public on the removal of the provisions in 33 CFR 177.07(f) and 177.08 that conflict with 33 CFR 165.1325.

VI. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, "Regulatory Planning and Review", and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard does not expect any economic impact as a result of this rule because it involves removing two criteria for unsafe conditions in 33 CFR part 177 that have been superseded by 33 CFR 165.1325.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rulemaking, which finalizes a lawfully promulgated interim rule, does not require a general notice of proposed rulemaking and, therefore, is exempt from the analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 604).

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Burt Lahn, U.S. Coast Guard Office of Navigation Standards (CG–NAV–3), email Burt.A.Lahn@uscg.mil, telephone 202–372–1526. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis is explained below.

Under 46 U.S.C. 4306, Federal regulations promulgated under the authority of 46 U.S.C. 4302 preempt State law unless the State law is identical to a Federal regulation or a State is specifically provided an

exemption to those regulations, or permitted to regulate marine safety articles carried or used to address a hazardous condition or circumstance unique to that State. As noted above, this rule simply removes superseded regulations regarding wave height and surface current provisions, and certain regulated boating areas from 33 CFR part 177.

Additionally, there are no existing State laws that are identical to these Federal regulations, nor have the States been provided an exemption to those regulations or permitted to regulate marine safety articles. Therefore, the rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. This rule will not result in such expenditure.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights.”

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, “Civil Justice Reform”, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks.” This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments”, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.” We have determined that it is not a “significant energy action” under that Order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under section 2.B.2, Figure 2–1, paragraph 34(g), of the Instruction because it involves regulations establishing, disestablishing, or changing RNAs. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 177

Marine safety.

Title 33—Navigation and Navigable Waters**PART 177—CORRECTION OF ESPECIALLY HAZARDOUS CONDITIONS**

For the reasons discussed in the preamble, under authority of 46 U.S.C. 4302, 4311; Pub. L. 103–206, 107 Stat. 2439, the interim rule amending 33 CFR part 177 that was published at 78 FR 40963 on July 9, 2013, is adopted as a final rule without change.

Dated: March 27, 2014.

Gary C. Rasicot,

Director of Marine Transportation Systems, U.S. Coast Guard.

[FR Doc. 2014–08374 Filed 4–11–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 9 and 721**

[EPA–HQ–OPPT–2013–0739; FRL–9909–25]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances; Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: EPA is withdrawing significant new use rules (SNURs) promulgated under the Toxic Substances Control Act (TSCA) for four chemical substances which were the subject of premanufacture notices (PMNs). EPA published these SNURs using direct final rulemaking procedures. EPA received notices of intent to submit adverse comments on these rules. Therefore, the Agency is withdrawing these SNURs, as required under the expedited SNUR rulemaking process. EPA intends to publish in the near future proposed SNURs for these four chemical substances under separate notice and comment procedures.

DATES: This final rule is effective April 14, 2014.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2013–0739, is available at <http://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301

Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: moss.kenneth@epa.gov.

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Does this action apply to me?**

A list of potentially affected entities is provided in the **Federal Register** of February 12, 2014 (79 FR 8273) (FRL–9903–70). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What direct final SNURs are being withdrawn?

In the **Federal Register** of February 12, 2014 (79 FR 8273), EPA issued several direct final SNURs, including SNURs for four chemical substances that are the subject of this withdrawal. These direct final rules were issued pursuant to the procedures in 40 CFR part 721, subpart D. In accordance with § 721.160(c)(3)(ii), EPA is withdrawing the rules issued for the chemical substances generically identified as MDI modified polyalkene glycols; acrylic acid esters polymers, reaction products with polyisocyanate; 1,3-benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid, 1,4-dimethyl 1,4-benzenedicarboxylate, 2,2-dimethyl-1,3-propanediol, dodecanedioic acid, 1,2-ethanediol, hexanedioic acid, 1,6-hexanediol, alkyldiol ester and aromatic isocyanate; and methylene diisocyanate polymer with polypropylene glycol and diols, which were the subject of PMNs P–13–365, P–13–392, P–13–393, and P–13–471, respectively, because the Agency received notices of intent to submit adverse comments. EPA intends

to publish proposed SNURs for these chemical substances under separate notice and comment procedures.

For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721, subpart D, and the **Federal Register** of July 27, 1989 (54 FR 31314). The record for the direct final SNUR for the chemical substances that are being removed was established at EPA–HQ–OPPT–2013–0739. That record includes information considered by the Agency in developing this rule and the notice of intent to submit adverse comments.

III. Statutory and Executive Order Reviews

This final rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Agency has determined that this withdrawal will not have any adverse impacts, economic or otherwise. The statutory and executive order review requirements applicable to the direct final rule were discussed in the **Federal Register** of February 12, 2014 (79 FR 8273). Those review requirements do not apply to this action because it is a withdrawal and does not contain any new or amended requirements.

IV. Congressional Review Act (CRA)

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 7, 2014.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

§ 9.1 [Amended]

■ 2. In § 9.1, remove under the undesignated center heading “Significant New Uses of Chemical Substances” §§ 721.10717, 721.10719, 721.10720, and 721.10723.

PART 721—[AMENDED]

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

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.10717, 721.10719, 721.10720, and 721.10723 [Removed]

■ 4. Remove §§ 721.10717, 721.10719, 721.10720, and 721.10723.

[FR Doc. 2014–08328 Filed 4–11–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 18

Official Symbol, Logo and Seal

AGENCY: Office of the Secretary, HHS.
ACTION: Direct final rule.

SUMMARY: The U.S. Department of Health and Human Services (HHS) is adopting requirements on the use of its official logo and seal. Use by any person or organization may be made only with prior written approval. Wrongful use of an official logo or seal is subject to administrative action and/or criminal penalty. HHS believes that this rule is non-controversial, and HHS anticipates no significant adverse comment. If HHS receives a significant adverse comment, it will withdraw the rule.

DATES: This rule is effective May 14, 2014 without further action, unless adverse comment is received by April 29, 2014. If adverse comment is received, HHS will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments by Mail/Hand Delivery/Courier to: Gloria Barnes, Office of the Assistant Secretary for Public Affairs, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Gloria Barnes, Office of the Assistant Secretary for Public Affairs (gloria.barnes@hhs.gov)

SUPPLEMENTARY INFORMATION: HHS is adopting regulations (45 CFR Part 18) on the use of its official logo and seal. HHS has developed a logo and seal that signifies the authoritativeness of the item or document to which it is affixed as an official endorsement of HHS. The logo and seal is to be used for official HHS business or as approved under HHS’ regulations.

HHS believes there is good cause to bypass notice and comment and proceed to a direct final rule pursuant to 5 U.S.C. 553(b). The rule is non-controversial and merely describes HHS’ official logo and seal. Because this rule only impacts HHS’ procedure and practice, notice and comment is unnecessary. Although HHS believes this direct final rule will not elicit any significant adverse comments, if such comments are received, HHS will publish a timely notice of withdrawal in the **Federal Register**.

Executive Order No. 12866

This rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, review by the Office of Management and Budget is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided by the Regulatory Flexibility Act, as amended, is not required.

List of Subjects in 45 CFR Part 18

Seals and insignia.

For the reasons set out in the preamble, HHS adds Part 18 to Title 45, Subtitle A, subchapter A of the Code of Federal Regulations as follows:

Subtitle A—Department of Health and Human Services

Subchapter A—General Administration

PART 18—OFFICIAL SYMBOL, LOGO, AND SEAL

Sec.

- 18.1 Description of the Symbol, Logo, and Seal.
- 18.2 Authority to affix Symbol, Logo, and Seal.
- 18.3 Official, unofficial or misuse of HHS emblems.
- 18.4 Prohibitions against unofficial use or misuse of the Symbol, Logo, or Seal.
- 18.5 Compliance and enforcement.

Authority: 42 U.S.C. 3505; 5 U.S.C. 301.

§ 18.1 Description of the Symbol, Logo, and Seal.

(a) The Departmental Symbol (Symbol) of the Department of Health and Human Services (HHS) is the key element in Department identification. It represents the American People sheltered in the wing of the American Eagle, suggesting the Department’s concern and responsibility for the welfare of the people. This Symbol is the visual link which connects the graphic communications of all components and programs of the Department. It is the major design component for the Department Identifiers—the Department Logo, Seal, and Signatures.

(b) The Symbol is described as follows: The outline of an American Eagle, facing left, with one of its wings stretched upward and the other wing pointed downward, is flanked on its right side by two outlines of the profile of a human head, both of which are located in between the eagle’s wings. One of the profile outlines is smaller than the other and is nestled in the larger outline.



(c) The HHS Departmental Logo (Logo) incorporates the Symbol and is described as follows: From the tip of the outstretched wing of the American Eagle in the Symbol to the tip of the other, downward-facing wing, the words, “DEPARTMENT OF HEALTH & HUMAN SERVICES • USA” form a circular arc.



(d) The HHS Departmental Seal (Seal) incorporates the Symbol and is described as follows: Starting from the tip of the downward-facing wing of the American Eagle in the HHS Symbol and forming a complete circle clockwise around the HHS Symbol, the words, “DEPARTMENT OF HEALTH & HUMAN SERVICES • USA •” are

printed, surrounded by a border composed of a solid inner ring at the base of the text and a triangular, scalloped edge at the top of the text.



(e) The HHS Departmental Symbol, Logo, and Seal shall each be referred to as an HHS emblem and shall collectively be referred to as HHS emblems.

§ 18.2 Authority to affix Symbol, Logo or Seal.

HHS emblems cannot be used for other than official HHS business without written authorization from the Secretary or the Secretary's designee. Authority to provide authorization is delegated to the Assistant Secretary for Public Affairs (ASPA) or its designee.

§ 18.3 Official, unofficial or misuse of HHS emblems.

HHS emblems are for use by HHS employees conducting official HHS business. HHS emblems cannot be used non-Federal organizations on its materials without written authorization from HHS.

Note to § 18.3: *Non-Federal organizations* refers to private sector, non-profit, advocacy, and commercial organizations, including HHS contractors and grantees.

§ 18.4 Prohibitions against unofficial use or misuse of the Symbol, Logo, or Seal.

Any person who uses an HHS emblem in a manner inconsistent with the

provision of this part may be subject to penalties under 18 U.S.C. 506, 18 U.S.C. 1017, or 42 U.S.C. 1320b-10.

§ 18.5 Compliance and enforcement.

In order to ensure adherence to the authorized uses of an HHS emblem, as provided in this part, a report of each suspected violation of this part or of questionable usage of any HHS emblem shall be submitted to the Inspector General, HHS Headquarters.

Dated: April 7, 2014.

Kathleen Sebelius,
Secretary.

[FR Doc. 2014-08190 Filed 4-11-14; 8:45 am]

BILLING CODE 4150-04-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 130501429-4198-02]

RIN 0648-XC659

Endangered and Threatened Wildlife; Final Rule To Revise the Code of Federal Regulations for Species Under the Jurisdiction of the National Marine Fisheries Service

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

ACTION: Final rule.

SUMMARY: We, NMFS, announce revisions to the Code of Federal Regulations (CFR) to clarify and update the descriptions of species under NMFS' jurisdiction that are currently listed as threatened or endangered under the Endangered Species Act of 1973 (ESA). Revisions include format changes to our lists of threatened and endangered species, revisions to regulatory language explaining our lists, updates to the descriptions of certain listed West Coast salmonid species to add or remove hatchery stocks consistent with our recently completed 5-year reviews under ESA section 4(c)(2), and corrections to regulatory text to fix inadvertent errors from previous rulemakings, update cross-references, and provide consistent language. We are not adding or removing any species to or from our lists, changing the status of any listed species, or adding or revising any critical habitat designation.

DATES: This final rule is effective on April 14, 2014.

ADDRESSES: Information concerning this final rule may be obtained by contacting

Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the 5-year status reviews can be found on our Web sites at <http://www.nmfs.noaa.gov/pr/listing/reviews.htm> and <http://www.westcoast.fisheries.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: For further information regarding this rule contact Maggie Miller, NMFS, Office of Protected Resources (301) 427-8403; for information on the 5-year status reviews of Pacific salmonids, contact Steve Stone, NMFS, West Coast Region (503) 231-2317.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA provides for both NMFS and the U.S. Fish and Wildlife Service (FWS) to make determinations as to the endangered or threatened status of "species" in response to petitions or on their own initiative. In accordance with the ESA, we (NMFS) make determinations as to the threatened or endangered status of species by regulation. These regulations provide the text for each species listing and include the content required by the ESA section 4(c)(1). We enumerate and maintain a list of species under our jurisdiction which we have determined to be threatened or endangered at 50 CFR 223.102 (threatened species) and 50 CFR 224.101 (endangered species) (hereafter referred to as the "NMFS Lists"). The FWS maintains two master lists of all threatened and endangered species, i.e., both species under NMFS' jurisdiction and species under FWS' jurisdiction (the "FWS Lists"), at 50 CFR 17.11 (threatened and endangered animals) and 50 CFR 17.12 (threatened and endangered plants). The term "species" for listing purposes under the ESA includes the following entities: species, subspecies, and, for vertebrates only, "distinct population segments (DPSs)." Pacific salmon are listed as "evolutionarily significant units (ESUs)," which are essentially equivalent to DPSs for the purpose of the ESA. For West Coast salmon and steelhead, many of the ESU and DPS descriptions include fish originating from specific artificial propagation programs (e.g., hatcheries) that, along with their naturally-produced counterparts, are included as part of the listed species.

We recently completed a 5-year review of the status of ESA-listed salmon ESUs and steelhead DPSs in California (76 FR 50447, August 15, 2011; and 76 FR 76386, December 7, 2011) and in Oregon, Idaho, and Washington (76 FR 50448; August 15,

2011). The ESA requires this regular review of listed species to determine whether a species should be delisted, reclassified, or whether the current classification should be retained (16 U.S.C. 1533(c)(2)). As a result of our review, we identified several errors, omissions, and updates that warrant revising the NMFS and FWS Lists for the sake of accuracy and improved readability. We also identified cross-referencing errors in our regulations at 50 CFR 223. On June 26, 2013, we proposed to revise the NMFS Lists based on the aforementioned review and additionally proposed to correct or clarify text and update the list formats for all species under our jurisdiction (78 FR 38270), and solicited public comments.

Summary of Comments Received in Response to the Proposed Rule

We received a single comment from an individual and a number of comments from the Washington Department of Fish and Wildlife (WDFW) during the public comment period. A summary of the comments and our responses is provided below.

Comment 1: One commenter objects to listing the species in the NMFS lists alphabetically by common name and states that in a list of this sort, a phylogenetic sequence should be used, and there are a number of published references that provide such lists. In this way, the agency would avoid the problem of taxa in a single genus being separated in the list by taxa of other genera. Listing some taxa by their common names and other taxa by their scientific names is confusing and inconsistent. As it stands, subspecific taxa are separated in the lists by other species. For example, bearded seal and Guadalupe fur seal are listed among three subspecies of ringed seals. The proposed rule calls for ordering the species alphabetically (not species and subspecies mixed together); therefore the three ringed seal subspecies should follow the Guadalupe fur seal in the list.

Response: We acknowledge the presence of lists that use phylogenetic sequences and alphabetize taxa by their scientific names, and note that common names may vary in local usage; however, we want to make this list a resource that is easily accessible and searchable by a wide variety of audiences, including the general public. We are acting under the assumption that the general public would be more likely to search by common name, for example, “salmon” or “salmon, Chinook,” rather than search under “*Oncorhynchus tshawytscha*” in order to learn more about a listing

determination or critical habitat for a species. In this way, we are also making our lists consistent with the format of the FWS List for threatened and endangered wildlife (50 CFR 17.11). The threatened and endangered wildlife on the FWS List are listed alphabetically by common name. Additionally, we have created headings in the tables (such as “Marine Mammals,” “Sea Turtles,” and “Fishes”) that should make searching for specific species less confusing. We are also removing the heading “Marine Invertebrates” and adding the new headings of “Corals” and “Molluscs” for increased specificity of the listed animals. This is not a substantive change, but having these more specific headings will help the public identify and locate species of interest in a more efficient manner.

The ESA defines “species” to include subspecies or a DPS of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(16)). As such, the ordering of the “species” alphabetically, as mentioned in the proposed rule, also includes ordering subspecies alphabetically as well. However, we agree that subspecies of the same species should not be separated by other species within the list order. Therefore, we will revise the listed subspecies by placing the subspecies’ common name within parentheses, similar to the way we have listed DPSs, and alphabetizing by the species’ common name. As an example, “Seal, Arctic ringed” will be revised to read “Seal, ringed (Arctic subspecies).”

Comment 2: WDFW recommends identifying listed stocks by naming them individually by basin (noting that this convention was used for the Puget Sound steelhead DPS).

Response: We believe that our current approach remains the best way to describe Pacific salmon and steelhead species listed under the ESA. In our experience, identifying an ESU or DPS using boundary streams or prominent geographic features (e.g., Cape Blanco) allows for concise and intuitive descriptions. As the commenter notes, there are a few cases where the unique geography of a species’ range (e.g., the inland waters of Puget Sound) may call for some additional description. However, in most cases ESA-listed ESUs and DPSs of salmonids under our jurisdiction are easily described using just a few boundary streams/features. More detailed information about finer-scale species distribution can be found in the critical habitat designations and in population delineations described in ESA recovery plans and supporting technical documents for each listed salmon ESU and steelhead DPS.

Comment 3: The Federal Register notice states revisions to the listing descriptions are “to take into account the addition or termination of specific artificial propagation programs which contribute individuals to that ESU or DPS.” WDFW recommends excluding segregated stocks meeting the following criteria: (i) Returning adults from the program do not contribute to the ESU; (ii) are within basins where wild stocks of the same species and run type do not occur; (iii) there is no historical natural population; (iv) the program is harvest oriented using an introduced stock to support a terminal fishery. As such, WDFW believes that the Lower Columbia River isolated (segregated) programs should be excluded from the listing.

Response: For the issues raised in this comment we rely on our 2005 “Policy on the Consideration of Hatchery-Origin Fish in Endangered Species Act Listing Determinations for Pacific Salmon and Steelhead” (“Hatchery Listing Policy”; 70 FR 37204, June 28, 2005). The Hatchery Listing Policy establishes criteria for (1) determining when hatchery stocks should be considered part of the listed ESU/DPS; and (2) in evaluating the effect of hatchery-produced fish on the extinction risk of an ESU/DPS. Delineating the “species” under consideration and then evaluating the species’ risk of extinction are distinct considerations in our ESA listing determinations, as reflected in the Hatchery Listing Policy. Some of WDFW’s recommended criteria are consistent with the Hatchery Listing Policy and pertinent to the determination of hatchery membership in an ESU/DPS. Some of the criteria, however, are not pertinent to the determination of hatchery membership but would inform an evaluation of the effects of hatchery fish on overall ESU/DPS extinction risk.

The Hatchery Listing Policy states that hatchery stocks will be considered part of an ESU/DPS if they exhibit a level of genetic divergence relative to the local natural population(s) that is not more than what occurs within the ESU/DPS. We evaluate the relatedness of each hatchery stock to the natural component of an ESU/DPS on the basis of stock origin and the degree of known or inferred genetic divergence between the hatchery stock and the local natural population(s). Several of the criteria that WDFW recommends for excluding segregated hatchery stocks are valid considerations for evaluating the level of divergence between a hatchery stock and the local natural population(s). Whether a hatchery stock is released in a basin where wild populations of the

same species and run type do not occur, whether natural populations exist in the basin (historically or currently), and whether a program propagates an introduced stock, are each important considerations in evaluating the level of divergence of a hatchery stock relative to the local natural population(s). However, whether a hatchery stock is contributing to natural productivity does not inform our determination of hatchery membership in a listed ESU/DPS. Rather, such information would inform our evaluation of the effects of the hatchery stock on overall ESU/DPS extinction risk. Similarly, the management purpose of a hatchery stock in-and-of-itself (e.g., if it is intended to support a terminal fishery) would not inform our determination of ESU/DPS membership. However, the interaction of the hatchery stock with natural populations, and any impacts on natural populations of a fishery the hatchery stock supports, are valid considerations in evaluating overall ESU/DPS extinction risk. We do not believe criteria relating to a hatchery stock's impacts on ESU/DPS extinction risk are valid considerations in determining whether a hatchery stock should be included as part of the listing. As such, we are not excluding the Lower Columbia River isolated (segregated) programs from the listing. For more discussion of this issue, the reader is referred to the response to comments in the Hatchery Listing Policy final rule (see Issue 6 and response, 70 FR at 37209).

Comment 4: WDFW recommends that the Upper Columbia River Spring-Run Chinook Salmon ESU include the recent Nason Creek Program which was implemented in 2013.

Response: Our review of the membership of hatchery programs in listed ESUs/DPS was conducted as part of the ESA 5-year reviews completed 2011 (76 FR 50448; August 15, 2011). Hatchery programs implemented or modified after our previous review will be evaluated as part of the next ESA 5-year reviews scheduled for 2015.

Comment 5: WDFW notes that fall-run Chinook salmon originating from Upper Columbia River "bright" hatchery stocks (referred to as "brights" because they maintain their silvery color throughout the upstream migration) that spawn in the mainstem Columbia River below Bonneville Dam are excluded from the Lower Columbia River Chinook Salmon ESU. Because this bright stock has been documented spawning in Hamilton Creek and is likely present in other Washington and Oregon Lower Gorge tributaries as well, WDFW recommended that this exclusion to the

listing be expanded to include the Lower Gorge tributaries adjacent to the Columbia River mainstem.

Response: We agree that fall-run Chinook salmon originating from the Upper Columbia River bright hatchery stocks that spawn in the Columbia River Gorge area tributaries below Bonneville Dam should also be excluded from the ESU. We have refined the definition for the Lower Columbia River Chinook ESU to exclude Upper Columbia River bright hatchery stocks that spawn in the mainstem Columbia River below Bonneville Dam, and in other tributaries upstream from the Sandy River to the Hood and White Salmon Rivers.

Comment 6: WDFW notes that the Sea Resources Tule Chinook Program was terminated over 5 years ago, and recommends that this program be deleted from the Lower Columbia River Chinook Salmon ESU.

Response: We agree. At the time of our 2011 ESA 5-year reviews the Sea Resources Tule Chinook Program had been terminated, but there were still returning adults. At this time, however, no more adult returns are expected. We have removed the Sea Resources Tule Chinook Program from the ESU definition.

Comment 7: WDFW notes that the Bonneville Hatchery Tule Fall Chinook Program (a portion of the Spring Creek NFH Tule Chinook Program transferred to Bonneville Hatchery) and that portion of the Big Creek Tule Chinook Program transferred to Youngs Bay for Select Area Fishery Enhancement do not support wild tule Chinook populations in these areas. WDFW also notes that it does not operate these programs (or portions of programs), but recommends they be considered for exclusion from the Lower Columbia River Chinook Salmon ESU.

Response: In our 2011 ESA 5-year reviews we determined that the Bonneville Hatchery Tule Fall Chinook Program did not merit inclusion in the ESU. This program was listed as being part of the ESU in the proposed rule by error. It has been removed from the definition of the Lower Columbia River Chinook ESU.

Comment 8: WDFW recommends excluding portions of the Big Creek and Spring Creek NFH Tule Chinook Programs from the Lower Columbia River Chinook Salmon ESU based on their release location because they do not support wild populations in those locations.

Response: As noted previously, we rely on our 2005 Hatchery Listing Policy when considering hatchery-origin fish in ESA listing determinations for Pacific salmon and steelhead. That policy does

not contemplate excluding hatchery stocks, or portions thereof, based on their release location or whether they are effectively contributing to the natural production of local populations. A key premise of the policy is that genetic resources represent the ecological diversity and evolutionary legacy of the species, and that these genetic resources can reside in hatchery fish as well as in natural fish. As such, excluding hatchery fish based on their release location or reproductive success would not recognize the genetic resource the hatchery stock represents to the ESU as a whole. In this final rule, we have therefore continued to include the Big Creek and Spring Creek NFH Tule Chinook Programs as part of the Lower Columbia River Chinook Salmon ESU.

Comment 9: WDFW notes that the Friends of the Cowlitz Spring Chinook Program and the Kalama River Spring Chinook Program are isolated programs and recommends deleting them from the Lower Columbia River Chinook Salmon ESU.

Response: The shift in these programs toward segregation and not using natural-origin fish in the broodstock is relatively recent. Our 2011 ESA 5-year reviews noted that these programs are trending toward divergence and should be reevaluated during the next 5-year review. We are not removing these programs from the ESU definition at this time, but these programs will be evaluated as part of the next ESA 5-year reviews scheduled for 2015.

Comment 10: WDFW disagrees with our proposal to include the Deep River Net Pens Tule Fall Chinook Program in the Lower Columbia River Chinook Salmon ESU, noting that it is an isolated program currently using broodstock from the Washougal Hatchery and does not support a wild tule Chinook population in Deep River.

Response: In our 2011 ESA 5-year reviews we determined that a number of tule fall Chinook programs did not merit inclusion in the ESU: The Deep River Net Pens Tule Fall Chinook Program; the Klaskanine Hatchery Tule Fall Chinook Program; the Bonneville Hatchery Tule Fall Chinook Program; and the Little White Salmon NFH Tule Fall Chinook Program. In the proposed rule these programs were erroneously listed as being part of the ESU. In this final rule we have corrected the ESU definition by removing these programs from the definition of the Lower Columbia River Chinook ESU.

Comment 11: WDFW concurs with our deletion of the now-terminated Elochoman River Tule Chinook Program from the Lower Columbia River Chinook

Salmon ESU. However, WDFW notes that it is in the process of developing a conservation level integrated tulle fall Chinook program on the Elochoman to be operated from the Beaver Creek Hatchery and recommended this new program be added to the ESU.

Response: Hatchery programs implemented or modified after our 2011 ESA 5-year reviews will be evaluated as part of the next ESA 5-year reviews scheduled for 2015. Accordingly, we are not adding the Beaver Creek Hatchery Tule Fall Chinook Program to the definition of the Lower Columbia River Chinook Salmon ESU at this time.

Comment 12: WDFW notes that the spring yearling Chinook program has been terminated at Marblemount Hatchery and recommends that this program be deleted from the Puget Sound Chinook Salmon ESU.

Response: We agree that it is appropriate to delete the spring yearlings component of the Marblemount Hatchery Program from the description of the Puget Sound Chinook listing. As such, we have struck the phrase “spring yearlings” from the description in this final rule so that the definition for the Puget Sound Chinook listing states the “Marblemount Hatchery Program (spring subyearlings and summer-run).”

Comment 13: WDFW notes that the Chinook River (Sea Resources Hatchery) Chum Salmon Program was terminated over 5 years ago and recommends that this program be deleted from the Columbia River Chum Salmon ESU.

Response: We agree. At the time of our 2011 ESA 5-year reviews the Chinook River (Sea Resources Hatchery) Chum Salmon Program had been terminated, but there were still returning adults. At this time, however, no more adult returns are expected. We have removed the Chinook River (Sea Resources Hatchery) Chum Salmon Program from the ESU definition.

Comment 14: WDFW recommends that the Washougal River Hatchery/Duncan Creek Hatchery Program (part of the Columbia River Chum Salmon ESU) be revised to read as the “Washougal River Hatchery/Duncan Creek Program,” because there is no hatchery on Duncan Creek.

Response: We agree and have made the correction in this final rule.

Comment 15: WDFW notes that the Sea Resources Hatchery Program and the Cathlamet High School Future Farmers of America Program were terminated over 5 years ago, and recommends that these programs be deleted from the Lower Columbia River Coho Salmon ESU.

Response: We agree. At the time of our 2011 ESA 5-year reviews the Sea Resources Hatchery Program and the Cathlamet High School Future Farmers of America Type-N Coho Program had been terminated, but there were still returning adult fish. At this time, however, no more adult returns are expected, and we have removed these two programs from the ESU definition.

Comment 16: WDFW comments that the following are isolated programs and recommends deleting them from the Lower Columbia River Coho Salmon ESU: Peterson Coho Program; Cowlitz Game & Anglers Coho Program; Friends of the Cowlitz Coho Program; Fish First Type N Program (used for the mainstem Lewis River); and Syverson Project Type-N Coho Program.

Response: These programs were not identified as segregated during our 2011 ESA 5-year review. Hatchery programs implemented or modified after the 2011 review will be evaluated as part of the next ESA 5-year reviews, which are scheduled for 2015.

Comment 17: WDFW concurs with our inclusion of the Cowlitz Trout Hatchery Late Winter-run Program in the Lower Columbia River Steelhead DPS, and further recommends that two additional integrated late-winter programs in the Tilton River and the Upper Cowlitz River be added to this DPS.

Response: The Tilton and Upper Cowlitz programs are relatively new (since our 2011 ESA 5-year reviews); hatchery programs implemented or modified after our previous review will be evaluated as part of the next ESA 5-year reviews in 2015.

Summary of Changes From the Proposed Rule

Based on the comments received and our review of the proposed rule, we made the changes listed below.

1. We revised the common names of listed subspecies by placing the subspecies' common name within parentheses and alphabetizing by the species' common name.
2. We removed the heading “Marine Invertebrates” from both the threatened species list at 50 CFR 223.102 and the endangered species list at 50 CFR 224.101. We created a new “Corals” heading for the threatened species list at 50 CFR 223.102 and a “Molluscs” heading for the endangered species list at 50 CFR 224.101.

3. We revised the description of the “Salmon, Chinook (Lower Columbia River ESU)” by excluding Upper Columbia River bright hatchery stocks that spawn in the mainstem Columbia River below Bonneville Dam and in

other tributaries upstream from the Sandy River to the Hood and White Salmon Rivers, and by removing the following artificial propagation programs from inclusion in the DPS: Sea Resources Tule Chinook Program, Bonneville Hatchery Tule Fall Chinook Program, Deep River Net Pens Tule Fall Chinook Program, Klaskanine Hatchery Tule Fall Chinook Program, and Little White Salmon NFH Tule Fall Chinook Program.

4. We revised the description of the “Salmon, Chinook (Puget Sound ESU)” by deleting reference to the spring yearling component of the Marblemount Hatchery Program.

5. We revised the description of the “Salmon, chum (Columbia River ESU)” by removing the Chinook River Program (Sea Resources Hatchery) from the included artificial propagation programs, and by revising the name of the Washougal River Hatchery/Duncan Creek Hatchery Program to read “Washougal River Hatchery/Duncan Creek Program.”

6. We revised the description of the “Salmon, coho (Lower Columbia River ESU)” by removing the Sea Resources Hatchery Program and the Cathlamet High School Future Farmers of America Type-N Coho Program from the included artificial propagation programs.

7. We made a few additional technical corrections to the regulatory text to provide consistent language. These minor edits do not affect the substance of the regulations.

More information regarding the other administrative changes and technical corrections to the Code of Federal Regulations that will clarify and update the descriptions of species under NMFS' jurisdiction, and which are being finalized with this rulemaking, can be found in the proposed rulemaking (78 FR 38270, June 26, 2013).

References

Copies of previous Federal Register notices and related reference materials are available on the Internet at <http://www.nmfs.noaa.gov/pr/listing/reviews.htm>, <http://www.westcoast.fisheries.noaa.gov/>, or upon request (see **FOR FURTHER INFORMATION CONTACT** section above).

Classification

Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and Executive Order 13211

This final rule simply updates sections 223 and 224 of the CFR pursuant to prior agency determinations or involves format changes, none of which could result in economic

impacts. Therefore, the economic analysis requirements of the Regulatory Flexibility Act and Executive Order 12866 are not applicable.

Federalism

In accordance with Executive Order 13132, we determined that this final rule does not have significant Federalism effects and that a Federalism assessment is not required. The revisions may have some benefit to state and local resource agencies in that the ESA-listed species addressed in this rulemaking are more clearly and consistently described.

Civil Justice Reform

The Department of Commerce has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. In keeping with that Order, we are revising our descriptions of ESA-listed species to improve the clarity and general draftsmanship of our regulations.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This final rule does not contain new or revised information collection requirements for which Office of Management and Budget (OMB) approval is required under the Paperwork Reduction Act. This final rule will not impose recordkeeping or reporting requirements on state or local governments, individuals, businesses, or organizations. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

National Environmental Policy Act of 1969 (NEPA)

This final rule clarifies and updates the descriptions of species under NMFS' jurisdiction that are currently listed as threatened or endangered under the ESA and thus is primarily administrative in nature. As such, NMFS has determined this final rule is categorically excluded from further NEPA review by NOAA Administrative Order 216-6, paragraph 6.03c.3(i). No extraordinary circumstances concerning this action exist. Therefore, NMFS will not prepare an Environmental Assessment or Environmental Impact Statement for the rule.

Government-to-Government Relationship With Tribes

Executive Order 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This final rule does not impose substantial direct compliance costs on Indian tribal governments or communities. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this final rule. Nonetheless, during our 5-year review of salmon and steelhead we solicited information from the tribes, met with several tribal governments and associated tribal fisheries commissions, and provided the opportunity for all interested tribes to comment on the proposed changes to the species' status and descriptions and discuss any concerns they may have. We will continue to inform potentially affected tribal governments, solicit their input, and coordinate on future management actions pertaining to the listed species addressed in this rule.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 224

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

Dated: April 8, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 223 and 224 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

- 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; subpart B, §§ 223.201 and 223.202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

- 2. Revise § 223.101(a) to read as follows:

§ 223.101 Purpose and scope.

(a) The regulations contained in this part identify the species under the jurisdiction of the Secretary of Commerce that have been determined to be threatened species pursuant to section 4(a) of the Act, and provide for the conservation of such species by establishing rules and procedures to govern activities involving the species.

* * * * *

- 3. Revise § 223.102 to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

(a) The table below identifies the species under the jurisdiction of the Secretary of Commerce that have been determined to be threatened pursuant to section 4(a) of the Act, species treated as threatened because they are sufficiently similar in appearance to threatened species, and experimental populations of threatened species.

(b) The columns entitled "Common name," "Scientific name," and "Description of listed entity" define the species within the meaning of the Act. In the "Common name" column, experimental populations are identified as "XE" for essential populations or "XN" for nonessential populations. Species listed based on similarity of appearance are identified as "S/A." Although a column for "Common name" is included, common names cannot be relied upon for identification of any specimen, because they may vary greatly in local usage. The "Scientific name" column provides the most recently accepted scientific name, relying to the extent practicable on the *International Code of Zoological Nomenclature*. In cases in which confusion might arise, a synonym(s) will be provided in parentheses. The "Description of listed entity" column identifies whether the listed entity comprises the entire species, a subspecies, or a distinct population segment (DPS) and provides a description for any DPSs. Unless otherwise indicated in the "Description of listed entity" column, all individual members of the listed entity and their progeny retain their listing status wherever found, including individuals in captivity. Information regarding the general range of the species, subspecies, or DPS may be found in the **Federal Register** notice(s) cited in the "Citation(s) for listing determination(s)" column.

(c) The "Citation(s) for listing determination(s)" column provides reference to the **Federal Register** notice(s) determining the species' status under the Act. The abbreviation "(SPR)"

(significant portion of its range) after a citation indicates that the species was listed based on its status in a significant portion of its range. If a citation does not include the “(SPR)” notation, it means that the species was listed based on its status throughout its entire range. For “(SPR)” listings, a geographical description of the SPR may be found in the referenced **Federal Register** notice. The “(SPR)” notation serves an informational purpose only and does not imply any limitation on the

application of the prohibitions or restrictions of the Act or implementing rules.

(d) The “Critical habitat” and “ESA rules” columns provide cross-references to other sections in this part and part 226. The term “NA” appearing in the “Critical habitat” column indicates that there are no critical habitat designations for that species; similarly, the term “NA” appearing in the “ESA rules” column indicates that there are no ESA rules for that species. However, all other

applicable rules in parts 222 through 226 and part 402 still apply to that species. Also, there may be other rules in this title that relate to such wildlife. The “ESA rules” column is not intended to list all Federal, state, tribal, or local governmental regulations that may apply to the species.

(e) The threatened species under the jurisdiction of the Secretary of Commerce are:

Species ¹			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Marine Mammals					
Seal, bearded (Beringia DPS).	<i>Erignathus barbatus nauticus.</i>	Bearded seals originating from breeding areas in the Arctic Ocean and adjacent seas in the Pacific Ocean between 145° E. Long. (Novosibirskiy) and 130° W. Long., and east of 157° E. Long. or east of the Kamchatka Peninsula.	77 FR 76740, Dec 28, 2012.	NA	NA.
Seal, bearded (Okhotsk DPS).	<i>Erignathus barbatus nauticus.</i>	Bearded seals originating from breeding areas in the Pacific Ocean west of 157° E. Long. or west of the Kamchatka Peninsula.	77 FR 76740, Dec 28, 2012.	NA	NA.
Seal, Guadalupe fur	<i>Arctocephalus townsendi.</i>	Entire species	50 FR 51252, Dec 16, 1985.	NA	223.201.
Seal, ringed (Arctic subspecies).	<i>Phoca (=Pusa) hispida hispida.</i>	Entire subspecies	77 FR 76706, Dec 28, 2012.	NA	NA.
Seal, ringed (Baltic subspecies).	<i>Phoca (=Pusa) hispida botnica.</i>	Entire subspecies	77 FR 76706, Dec 28, 2012.	NA	NA.
Seal, ringed (Okhotsk subspecies).	<i>Phoca (=Pusa) hispida ochotensis.</i>	Entire subspecies	77 FR 76706, Dec 28, 2012.	NA	NA.
Seal, spotted (Southern DPS).	<i>Phoca largha</i>	Spotted seals originating from breeding areas in the Pacific Ocean south of 43° N. Lat.	75 FR 65239, Oct 22, 2010.	NA	223.212.
Sea Turtles²					
Sea turtle, green	<i>Chelonia mydas</i>	Entire species, except when listed as endangered under §224.101.	43 FR 32800, Jul 28, 1978.	226.208	223.205, 223.206, 223.207.
Sea turtle, loggerhead (Northwest Atlantic Ocean DPS).	<i>Caretta caretta</i>	Loggerhead sea turtles originating from the Northwest Atlantic Ocean west of 40° W. Long.	76 FR 58868, Sep 22, 2011.	NA	223.205, 223.206, 223.207.
Sea turtle, loggerhead (South Atlantic Ocean DPS).	<i>Caretta caretta</i>	Loggerhead sea turtles originating from the South Atlantic Ocean west of 20° E. Long. and east of 67° W. Long.	76 FR 58868, Sep 22, 2011.	NA	223.205, 223.206, 223.207.
Sea turtle, loggerhead (Southeast Indo-Pacific Ocean DPS).	<i>Caretta caretta</i>	Loggerhead sea turtles originating from the Southeast Indian Ocean east of 80° E. Long. and from the South Pacific Ocean west of 141° E. Long.	76 FR 58868, Sep 22, 2011.	NA	223.205, 223.206, 223.207.
Sea turtle, loggerhead (Southwest Indian Ocean DPS).	<i>Caretta caretta</i>	Loggerhead sea turtles originating from the Southwest Indian Ocean west of 80° E. Long. and east of 20° E. Long.	76 FR 58868, Sep 22, 2011.	NA	223.205, 223.206, 223.207.
Sea turtle, olive ridley ...	<i>Lepidochelys olivacea</i> ..	Entire species, except when listed as endangered under §224.101.	43 FR 32800, Jul 28, 1978.	NA	223.205, 223.206, 223.207.
Fishes					
Eulachon (Southern DPS).	<i>Thaleichthys pacificus</i> ..	Eulachon originating from the Skeena River in British Columbia south to and including the Mad River in northern California.	75 FR 13012, Mar 18, 2010.	226.222	NA.
Rockfish, canary (Puget Sound/Georgia Basin DPS).	<i>Sebastes pinniger</i>	Canary rockfish originating from Puget Sound and the Georgia Basin.	75 FR 22276, Apr 28, 2010.	NA	NA.
Rockfish, yelloweye (Puget Sound/Georgia Basin DPS).	<i>Sebastes ruberrimus</i>	Yelloweye rockfish originating from Puget Sound and the Georgia Basin.	75 FR 22276, Apr 28, 2010.	NA	NA.
Salmon, Chinook (California Coastal ESU).	<i>Oncorhynchus tshawytscha.</i>	Naturally spawned Chinook salmon originating from rivers and streams south of the Klamath River to and including the Russian River.	70 FR 37160, Jun 28, 2005.	226.211	223.203.
Salmon, Chinook (Central Valley spring-run ESU).	<i>Oncorhynchus tshawytscha.</i>	Naturally spawned spring-run Chinook salmon originating from the Sacramento River and its tributaries. Also, spring-run Chinook salmon from the Feather River Hatchery Spring-run Chinook Program. This DPS does not include Chinook salmon that are designated as part of an experimental population.	70 FR 37160, Jun 28, 2005.	226.211	223.203.

Species ¹			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Salmon, Chinook (Central Valley spring-run ESU-XN).	<i>Oncorhynchus tshawytscha.</i>	Central Valley spring-run Chinook salmon only when, and at such times as, they are found in the San Joaquin River from Friant Dam downstream to its confluence with the Merced River, delineated by a line between decimal latitude and longitude coordinates: 37.348930° N., 120.975174° W. and 37.349099° N., 120.974749° W., as well as all sloughs, channels, floodways, and waterways connected with the San Joaquin River that allow for Central Valley spring-run Chinook salmon access, but excluding the Merced River. Also, Central Valley spring-run Chinook salmon when found in portions of the Kings River that connect with the San Joaquin River during high water years.	78 FR 79622, Dec 31, 2013.	NA	223.301.
Salmon, Chinook (Lower Columbia River ESU).	<i>Oncorhynchus tshawytscha.</i>	Naturally spawned Chinook salmon originating from the Columbia River and its tributaries downstream of a transitional point east of the Hood and White Salmon Rivers, and any such fish originating from the Willamette River and its tributaries below Willamette Falls. Not included in this DPS are: (1) spring-run Chinook salmon originating from the Clackamas River; (2) fall-run Chinook salmon originating from Upper Columbia River bright hatchery stocks, that spawn in the mainstem Columbia River below Bonneville Dam, and in other tributaries upstream from the Sandy River to the Hood and White Salmon Rivers; (3) spring-run Chinook salmon originating from the Round Butte Hatchery (Deschutes River, Oregon) and spawning in the Hood River; (4) spring-run Chinook salmon originating from the Carson National Fish Hatchery and spawning in the Wind River; and (5) naturally spawning Chinook salmon originating from the Rogue River Fall Chinook Program. This DPS does include Chinook salmon from 15 artificial propagation programs: the Big Creek Tule Chinook Program; Astoria High School Salmon-Trout Enhancement Program (STEP) Tule Chinook Program; Warrenton High School STEP Tule Chinook Program; Cowlitz Tule Chinook Program; North Fork Toutle Tule Chinook Program; Kalama Tule Chinook Program; Washougal River Tule Chinook Program; Spring Creek National Fish Hatchery (NFH) Tule Chinook Program; Cowlitz Spring Chinook Program in the Upper Cowlitz River and the Cispus River; Friends of the Cowlitz Spring Chinook Program; Kalama River Spring Chinook Program; Lewis River Spring Chinook Program; Fish First Spring Chinook Program; and the Sandy River Hatchery (Oregon Department of Fish and Wildlife Stock #11).	70 FR 37160, Jun 28, 2005.	226.212	223.203.

Species ¹			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Salmon, Chinook (Puget Sound ESU).	<i>Oncorhynchus tshawytscha</i> .	Naturally spawned Chinook salmon originating from rivers flowing into Puget Sound from the Elwha River (inclusive) eastward, including rivers in Hood Canal, South Sound, North Sound and the Strait of Georgia. Also, Chinook salmon from 26 artificial propagation programs: the Kendall Creek Hatchery Program; Marblemount Hatchery Program (spring subyearlings and summer-run); Harvey Creek Hatchery Program (summer-run and fall-run); Whitehorse Springs Pond Program; Wallace River Hatchery Program (yearlings and subyearlings); Tulalip Bay Program; Issaquah Hatchery Program; Soos Creek Hatchery Program; Icy Creek Hatchery Program; Keta Creek Hatchery Program; White River Hatchery Program; White Acclimation Pond Program; Hupp Springs Hatchery Program; Voights Creek Hatchery Program; Diru Creek Program; Clear Creek Program; Kalama Creek Program; George Adams Hatchery Program; Rick's Pond Hatchery Program; Hamma Hamma Hatchery Program; Dungeness/Hurd Creek Hatchery Program; Elwha Channel Hatchery Program; and the Skookum Creek Hatchery Spring-run Program.	70 FR 37160, Jun 28, 2005.	226.212	223.203.
Salmon, Chinook (Snake River fall-run ESU).	<i>Oncorhynchus tshawytscha</i> .	Naturally spawned fall-run Chinook salmon originating from the mainstem Snake River below Hells Canyon Dam and from the Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River subbasins. Also, fall-run Chinook salmon from four artificial propagation programs: the Lyons Ferry Hatchery Program; Fall Chinook Acclimation Ponds Program; Nez Perce Tribal Hatchery Program; and the Oxbow Hatchery Program.	70 FR 37160, Jun 28, 2005.	226.205	223.203.
Salmon, Chinook (Snake River spring/summer-run ESU).	<i>Oncorhynchus tshawytscha</i> .	Naturally spawned spring/summer-run Chinook salmon originating from the mainstem Snake River and the Tucannon River, Grande Ronde River, Imnaha River, and Salmon River subbasins. Also, spring/summer-run Chinook salmon from 11 artificial propagation programs: the Tucannon River Program; Lostine River Program; Catherine Creek Program; Lookingglass Hatchery Program; Upper Grande Ronde Program; Imnaha River Program; Big Sheep Creek Program; McCall Hatchery Program; Johnson Creek Artificial Propagation Enhancement Program; Pahsimeroi Hatchery Program; and the Sawtooth Hatchery Program.	70 FR 37160, Jun 28, 2005.	226.205	223.203.
Salmon, Chinook (Upper Willamette River ESU).	<i>Oncorhynchus tshawytscha</i> .	Naturally spawned spring-run Chinook salmon originating from the Clackamas River and from the Willamette River and its tributaries above Willamette Falls. Also, spring-run Chinook salmon from six artificial propagation programs: the McKenzie River Hatchery Program (Oregon Department of Fish and Wildlife (ODFW) Stock #23); Marion Forks Hatchery/North Fork Santiam River Program (ODFW Stock #21); South Santiam Hatchery Program (ODFW Stock #24) in the South Fork Santiam River and Mollala River; Willamette Hatchery Program (ODFW Stock #22); and the Clackamas Hatchery Program (ODFW Stock #19).	70 FR 37160, Jun 28, 2005.	226.212	223.203.
Salmon, chum (Columbia River ESU).	<i>Oncorhynchus keta</i>	Naturally spawned chum salmon originating from the Columbia River and its tributaries in Washington and Oregon. Also, chum salmon from two artificial propagation programs: the Grays River Program and the Washougal River Hatchery/Duncan Creek Program.	70 FR 37160, Jun 28, 2005.	226.212	223.203.

Species ¹			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Salmon, chum (Hood Canal summer-run ESU).	<i>Oncorhynchus keta</i>	Naturally spawned summer-run chum salmon originating from Hood Canal and its tributaries as well as from Olympic Peninsula rivers between Hood Canal and Dungeness Bay (inclusive). Also, summer-run chum salmon from four artificial propagation programs: the Hamma Hamma Fish Hatchery Program; Lilliwaup Creek Fish Hatchery Program; Tahuya River Program; and the Jimmycomelately Creek Fish Hatchery Program.	70 FR 37160, Jun 28, 2005.	226.212	223.203.
Salmon, coho (Lower Columbia River ESU).	<i>Oncorhynchus kisutch</i> ..	Naturally spawned coho salmon originating from the Columbia River and its tributaries downstream from the Big White Salmon and Hood Rivers (inclusive) and any such fish originating from the Willamette River and its tributaries below Willamette Falls. Also, coho salmon from 21 artificial propagation programs: the Grays River Program; Peterson Coho Project; Big Creek Hatchery Program (Oregon Department of Fish and Wildlife (ODFW) Stock #13); Astoria High School Salmon-Trout Enhancement Program (STEP) Coho Program; Warrenton High School STEP Coho Program; Cowlitz Type-N Coho Program in the Upper and Lower Cowlitz Rivers; Cowlitz Game and Anglers Coho Program; Friends of the Cowlitz Coho Program; North Fork Toutle River Hatchery Program; Kalama River Type-N Coho Program; Kalama River Type-S Coho Program; Lewis River Type-N Coho Program; Lewis River Type-S Coho Program; Fish First Wild Coho Program; Fish First Type-N Coho Program; Syverson Project Type-N Coho Program; Washougal River Type-N Coho Program; Eagle Creek National Fish Hatchery Program; Sandy Hatchery Program (ODFW Stock #11); and the Bonneville/Cascade/Oxbow Complex (ODFW Stock #14) Hatchery Program.	70 FR 37160, Jun 28, 2005.	NA	223.203.
Salmon, coho (Oregon Coast ESU).	<i>Oncorhynchus kisutch</i> ..	Naturally spawned coho salmon originating from coastal rivers south of the Columbia River and north of Cape Blanco. Also, coho salmon from one artificial propagation program: the Cow Creek Hatchery Program (Oregon Department of Fish and Wildlife Stock #18).	76 FR 35755, Jun 20, 2011.	226.212	223.203.
Salmon, coho (Southern Oregon/Northern California Coast ESU).	<i>Oncorhynchus kisutch</i> ..	Naturally spawned coho salmon originating from coastal streams and rivers between Cape Blanco, Oregon, and Punta Gorda, California. Also, coho salmon from three artificial propagation programs: the Cole Rivers Hatchery Program (ODFW Stock #52); Trinity River Hatchery Program; and the Iron Gate Hatchery Program.	70 FR 37160, Jun 28, 2005.	226.210	223.203.
Salmon, sockeye (Ozette Lake ESU).	<i>Oncorhynchus nerka</i>	Naturally spawned sockeye salmon originating from the Ozette River and Ozette Lake and its tributaries. Also, sockeye salmon from two artificial propagation programs: the Umbrella Creek Hatchery Program; and the Big River Hatchery Program.	70 FR 37160, Jun 28, 2005.	226.212	223.203.
Steelhead (California Central Valley DPS).	<i>Oncorhynchus mykiss</i> ..	Naturally spawned anadromous <i>O. mykiss</i> (steelhead) originating below natural and manmade impassable barriers from the Sacramento and San Joaquin Rivers and their tributaries; excludes such fish originating from San Francisco and San Pablo Bays and their tributaries. This DPS does include steelhead from two artificial propagation programs: the Coleman National Fish Hatchery Program, and the Feather River Fish Hatchery Program.	71 FR 834, Jan 5, 2006	226.211	223.203.

Species ¹			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Steelhead (Central California Coast DPS).	<i>Oncorhynchus mykiss</i> ..	Naturally spawned anadromous <i>O. mykiss</i> (steelhead) originating below natural and manmade impassable barriers from the Russian River to and including Aptos Creek, and all drainages of San Francisco and San Pablo Bays eastward to Chipps Island at the confluence of the Sacramento and San Joaquin Rivers. Also, steelhead from two artificial propagation programs: the Don Clausen Fish Hatchery Program, and the Kingfisher Flat Hatchery Program (Monterey Bay Salmon and Trout Project).	71 FR 834, Jan 5, 2006	226.211	223.203.
Steelhead (Lower Columbia River DPS).	<i>Oncorhynchus mykiss</i> ..	Naturally spawned anadromous <i>O. mykiss</i> (steelhead) originating below natural and manmade impassable barriers from rivers between the Cowlitz and Wind Rivers (inclusive) and the Willamette and Hood Rivers (inclusive); excludes such fish originating from the upper Willamette River basin above Willamette Falls. This DPS does include steelhead from seven artificial propagation programs: the Cowlitz Trout Hatchery Late Winter-run Program (Lower Cowlitz); Kalama River Wild Winter-run and Summer-run Programs; Clackamas Hatchery Late Winter-run Program (Oregon Department of Fish and Wildlife (ODFW) Stock #122); Sandy Hatchery Late Winter-run Program (ODFW Stock #11); Hood River Winter-run Program (ODFW Stock #50); and the Lewis River Wild Late-run Winter Steelhead Program.	71 FR 834, Jan 5, 2006	226.212	223.203.
Steelhead (Middle Columbia River DPS).	<i>Oncorhynchus mykiss</i> ..	Naturally spawned anadromous <i>O. mykiss</i> (steelhead) originating below natural and manmade impassable barriers from the Columbia River and its tributaries upstream of the Wind and Hood Rivers (exclusive) to and including the Yakima River; excludes such fish originating from the Snake River basin. This DPS does include steelhead from seven artificial propagation programs: the Touchet River Endemic Program; Yakima River Kelt Reconditioning Program (in Satus Creek, Toppenish Creek, Naches River, and Upper Yakima River); Umatilla River Program (Oregon Department of Fish and Wildlife (ODFW) Stock #91); and the Deschutes River Program (ODFW Stock #66). This DPS does not include steelhead that are designated as part of an experimental population.	71 FR 834, Jan 5, 2006	226.212	223.203.
Steelhead (Middle Columbia River DPS—XN).	<i>Oncorhynchus mykiss</i> ..	Middle Columbia River steelhead only when, and at such times as, they are found above Round Butte Dam.	78 FR 2893, Jan. 15, 2013.	NA	223.301.
Steelhead (Northern California DPS).	<i>Oncorhynchus mykiss</i> ..	Naturally spawned anadromous <i>O. mykiss</i> (steelhead) originating below natural and manmade impassable barriers in California coastal river basins from Redwood Creek to and including the Gualala River.	71 FR 834, Jan 5, 2006	226.211	223.203.
Steelhead (Puget Sound DPS).	<i>Oncorhynchus mykiss</i> ..	Naturally spawned anadromous <i>O. mykiss</i> (steelhead) originating below natural and manmade impassable barriers from rivers flowing into Puget Sound from the Elwha River (inclusive) eastward, including rivers in Hood Canal, South Sound, North Sound and the Strait of Georgia. Also, steelhead from six artificial propagation programs: the Green River Natural Program; White River Winter Steelhead Supplementation Program; Hood Canal Steelhead Supplementation Off-station Projects in the Dewatto, Skokomish, and Duckabush Rivers; and the Lower Elwha Fish Hatchery Wild Steelhead Recovery Program.	72 FR 26722, May 11, 2007.	NA	223.203.

Species ¹			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Steelhead (Snake River Basin DPS).	<i>Oncorhynchus mykiss</i> ..	Naturally spawned anadromous <i>O. mykiss</i> (steelhead) originating below natural and manmade impassable barriers from the Snake River basin. Also, steelhead from six artificial propagation programs: the Tucannon River Program; Dworshak National Fish Hatchery Program; Lolo Creek Program; North Fork Clearwater Program; East Fork Salmon River Program; and the Little Sheep Creek/Imnaha River Hatchery Program (Oregon Department of Fish and Wildlife Stock #29).	71 FR 834, Jan 5, 2006	226.212	223.203.
Steelhead (South-Central California Coast DPS).	<i>Oncorhynchus mykiss</i> ..	Naturally spawned anadromous <i>O. mykiss</i> (steelhead) originating below natural and manmade impassable barriers from the Pajaro River to (but not including) the Santa Maria River.	71 FR 834, Jan 5, 2006	226.211	223.203.
Steelhead (Upper Columbia River DPS).	<i>Oncorhynchus mykiss</i> ..	Naturally spawned anadromous <i>O. mykiss</i> (steelhead) originating below natural and manmade impassable barriers from the Columbia River and its tributaries upstream of the Yakima River to the U.S.-Canada border. Also, steelhead from six artificial propagation programs: the Wenatchee River Program; Wells Hatchery Program (in the Methow and Okanogan Rivers); Winthrop National Fish Hatchery Program; Omak Creek Program; and the Ringold Hatchery Program.	71 FR 834, Jan 5, 2006	226.212	223.203.
Steelhead (Upper Willamette River DPS).	<i>Oncorhynchus mykiss</i> ..	Naturally spawned anadromous winter-run <i>O. mykiss</i> (steelhead) originating below natural and manmade impassable barriers from the Willamette River and its tributaries upstream of Willamette Falls to and including the Calapooia River.	71 FR 834, Jan 5, 2006	226.212	223.203.
Sturgeon, Atlantic (Atlantic subspecies; Gulf of Maine DPS).	<i>Acipenser oxyrinchus oxyrinchus</i> .	Anadromous Atlantic sturgeon originating from watersheds from the Maine/Canadian border and extending southward to include all associated watersheds draining into the Gulf of Maine as far south as Chatham, Massachusetts.	77 FR 5880, Feb 6, 2012.	NA	223.211.
Sturgeon, Atlantic (Gulf subspecies).	<i>Acipenser oxyrinchus desotoi</i> .	Entire subspecies	56 FR 49653, Sep 30, 1991.	226.214	17.44(v).
Sturgeon, green (Southern DPS).	<i>Acipenser medirostris</i> ..	Green sturgeon originating from the Sacramento River basin and from coastal rivers south of the Eel River (exclusive).	71 FR 17757, April 7, 2006; 71 FR 19241, April 13, 2006.	226.219	223.210.
Corals					
Coral, elkhorn	<i>Acropora palmata</i>	Entire species	71 FR 26852, May 9, 2006.	226.216	223.208.
Coral, staghorn	<i>Acropora cervicornis</i>	Entire species	71 FR 26852, May 9, 2006.	226.216	223.208.
Marine Plants					
Seagrass, Johnson's	<i>Halophila johnsonii</i>	Entire species	63 FR 49035, Sep 14, 1998.	226.213	NA.

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

² Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

■ 4. In § 223.201, paragraph (b)(1) is revised to read as follows:

§ 223.201 Guadalupe fur seal.

* * * * *

(b) *Exceptions.* (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under paragraph (a) of this section subject to the provisions of part 222 subpart C, General Permit Procedures.

* * * * *

■ 5. In § 223.203:

- a. Revise paragraph (a), the introductory text of paragraph (b), paragraph (b)(1), and the introductory text of paragraphs (b)(2), (b)(3), and (b)(4);
- b. Remove and reserve paragraph (b)(4)(v);
- c. Revise the introductory text of paragraphs (b)(5) through (13); and,
- d. Revise the first sentence of paragraph (c).

The revisions read as follows:

§ 223.203 Anadromous fish.

(a) *Prohibitions.* The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to fish with an intact adipose fin that are part of the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102.

(b) Limits on the prohibitions. The limits to the prohibitions of paragraph (a) of this section relating to threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*)

listed in § 223.102 are described in the following paragraphs:

(1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations in part 222 of this chapter implementing such exceptions, also apply to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102.

(2) The prohibitions of paragraph (a) of this section relating to threatened Puget Sound steelhead listed in § 223.102 do not apply to:

(3) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to any employee or designee of NMFS, the United States Fish and Wildlife Service, any Federal land management agency, the Idaho Department of Fish and Game (IDFG), Washington Department of Fish and Wildlife (WDFW), the Oregon Department of Fish and Wildlife (ODFW), California Department of Fish and Game (CDFG), or of any other governmental entity that has co-management authority for the listed salmonids, when the employee or designee, acting in the course of his or her official duties, takes a threatened salmonid without a permit if such action is necessary to:

(4) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to fishery harvest activities provided that:

(5) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to activity associated with artificial propagation programs provided that:

(6) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to actions undertaken in compliance with a resource management plan developed jointly by the States of Washington, Oregon and/or Idaho and the Tribes (joint plan) within the continuing jurisdiction of *United States v. Washington* or *United States v. Oregon*, the on-going Federal court proceedings

to enforce and implement reserved treaty fishing rights, provided that:

(7) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to scientific research activities provided that:

(8) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to habitat restoration activities, as defined in paragraph (b)(8)(iv) of this section, provided that the activity is part of a watershed conservation plan, and:

(9) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to the physical diversion of water from a stream or lake, provided that:

(10) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to routine road maintenance activities provided that:

(11) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to activities within the City of Portland, Oregon Parks and Recreation Department's (PP&R) Pest Management Program (March 1997), including its Waterways Pest Management Policy updated December 1, 1999, provided that:

(12) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to municipal, residential, commercial, and industrial (MRCI) development (including redevelopment) activities provided that:

(13) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102 do not apply to non-Federal forest management activities

conducted in the State of Washington provided that:

(c) *Affirmative Defense*. In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus *Oncorhynchus*) listed in § 223.102, any person claiming the benefit of any limit listed in paragraph (b) of this section or § 223.204(a) shall have a defense where the person can demonstrate that the limit is applicable and was in force, and that the person fully complied with the limit at the time of the alleged violation.

■ 6. In § 223.208, paragraph (a)(1) is revised to read as follows:

§ 223.208 Corals.

(a) * * *
(1) The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals listed as threatened in § 223.102, except as provided in § 223.208(c).

■ 7. In § 223.210:

- a. Revise section heading;
- b. Revise paragraphs (a) and (b) introductory text, (b)(1) introductory text, paragraph (b)(2), (b)(3) introductory text, and (b)(4) introductory text;
- c. Revise paragraph (c) introductory text, (c)(1) introductory text, (c)(2) introductory text, and (c)(3) introductory text; and,
- d. Revise paragraphs (d) and (e).

The revisions read as follows:

§ 223.210 Green sturgeon.

(a) *Prohibitions*. The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to the threatened Southern Distinct Population Segment (DPS) of green sturgeon listed in § 223.102.

(b) *Exceptions*. Exceptions to the take prohibitions described in section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) applied in paragraph (a) of this section to the threatened Southern DPS listed in § 223.102 are described in the following paragraphs (b)(1) through (b)(3).

(1) *Scientific research and monitoring exceptions*. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to ongoing or future Federal, state, or private-sponsored scientific research or monitoring activities if:

* * * * *

(2) *Enforcement exception.* The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to any employee of NMFS, when the employee, acting in the course of his or her official duties, takes a Southern DPS fish listed in § 223.102 without a permit, if such action is necessary for purposes of enforcing the ESA or its implementing regulations.

(3) *Emergency fish rescue and salvage exceptions.* The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to emergency fish rescue and salvage activities that include aiding sick, injured, or stranded fish, disposing of dead fish, or salvaging dead fish for use in scientific studies, if:

(4) *Habitat restoration exceptions.* The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to habitat restoration activities including barrier removal or modification to restore water flows, riverine or estuarine bed restoration, natural bank stabilization, restoration of native vegetation, removal of non-native species, or removal of contaminated sediments, that reestablish self-sustaining habitats for the Southern DPS, if:

(c) *Exemptions via ESA 4(d) Program Approval.* Exemptions from the take prohibitions described in section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) applied in paragraph (a) of this section to the threatened Southern DPS listed in § 223.102 are described in the following paragraphs:

(1) *Scientific research and monitoring exemptions.* The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to ongoing or future state-sponsored scientific research or monitoring activities that are part of a NMFS-approved, ESA-compliant state 4(d) research program conducted by, or in coordination with, state fishery management agencies (California Department of Fish and Game, Oregon Department of Fish and Wildlife, Washington Department of Fish and Wildlife, or Alaska Department of Fish and Game), or as part of a monitoring and research program overseen by, or coordinated by, one of these agencies. State 4(d) research programs must meet the following criteria:

(2) *Fisheries exemptions.* The prohibitions of paragraph (a) of this

section relating to the threatened Southern DPS listed in § 223.102 do not apply to fisheries activities that are conducted in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP). If NMFS finds that an FMEP meets the criteria listed below, a letter of concurrence which sets forth the terms of the FMEP's implementation and the duties of the parties pursuant to the FMEP, will be issued to the applicant.

(3) *Tribal exemptions.* The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to fishery harvest or other activities undertaken by a tribe, tribal member, tribal permittee, tribal employee, or tribal agent in Willapa Bay, WA, Grays Harbor, WA, Coos Bay, OR, Winchester Bay, OR, Humboldt Bay, CA, and any other area where tribal treaty fishing occurs, if those activities are compliant with a tribal resource management plan (Tribal Plan), provided that the Secretary determines that implementation of such Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the Southern DPS. In making that determination the Secretary shall use the best available biological data (including any tribal data and analysis) to determine the Tribal Plan's impact on the biological requirements of the species, and will assess the effect of the Tribal Plan on survival and recovery, consistent with legally enforceable tribal rights and with the Secretary's trust responsibilities to tribes.

(d) *ESA section 10 permits.* The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the ESA relating to endangered species, including regulations in part 222 of this chapter implementing such exceptions, also apply to the threatened Southern DPS listed in § 223.102. Federal, state, and private-sponsored research activities for scientific research or enhancement purposes that are not covered under Scientific Research and Monitoring Exceptions as described in paragraph (b)(1) of this section or Scientific Research and Monitoring Exemptions as described in paragraph (c)(1) of this section, may take Southern DPS fish pursuant to the specifications of an ESA section 10 permit.

(e) *Affirmative defense.* In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened Southern DPS listed in § 223.102, any person claiming that his or her take is

excepted via methods listed in paragraph (b) of this section shall have a defense where the person can demonstrate that the exception is applicable and was in force, and that the person fully complied with the exception's requirements at the time of the alleged violation. This defense is an affirmative defense that must be raised, pleaded, and proven by the proponent. If proven, this defense will be an absolute defense to liability under section 9(a)(1)(G) of the ESA with respect to the alleged violation.

■ 8. Add § 223.212 to read as follows:

§ 223.212 Southern DPS of spotted seal.

The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species shall apply to the Southern Distinct Population Segment of spotted seal listed in § 223.102.

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 9. The authority citation for part 224 continues to read as follows:

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

■ 10. Revise § 224.101 to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species

(a) The regulations in this part identify the species under the jurisdiction of the Secretary of Commerce that have been determined to be endangered species pursuant to section 4(a) of the Act, and provide for the conservation of such species by establishing rules and procedures to governing activities involving the species.

(b) The regulations in this part apply only to the endangered species enumerated in this section.

(c) The provisions of this part are in addition to, and not in lieu of, other regulations of parts 222 through 226 of this chapter which prescribe additional restrictions or conditions governing endangered species.

(d) The table below identifies the species under the jurisdiction of the Secretary of Commerce that have been determined to be endangered pursuant to section 4(a) of the Act, species treated as endangered because they are sufficiently similar in appearance to endangered species, and experimental populations of endangered species.

(e) The columns entitled "Common name," "Scientific name," and "Description of listed entity" define the species within the meaning of the Act. In the "Common name" column,

experimental populations are identified as “XE” for essential populations or “XN” for nonessential populations. Species listed based on similarity of appearance are identified as “S/A.” Although a column for “Common name” is included, common names cannot be relied upon for identification of any specimen, because they may vary greatly in local usage. The “Scientific name” column provides the most recently accepted scientific name, relying to the extent practicable on the *International Code of Zoological Nomenclature*. In cases in which confusion might arise, a synonym(s) will be provided in parentheses. The “Description of listed entity” column identifies whether the listed entity comprises the entire species, a subspecies, or a distinct population segment (DPS) and provides a description for any DPSs. Unless otherwise indicated in the “Description of listed entity” column, all individual members of the listed entity and their

progeny retain their listing status wherever found, including individuals in captivity. Information regarding the general range of the species, subspecies, or DPS may be found in the **Federal Register** notice(s) cited in the “Citation(s) for listing determination(s)” column. (f) The “Citation(s) for listing determination(s)” column provides reference to the **Federal Register** notice(s) determining the species’ status under the Act. The abbreviation “(SPR)” (significant portion of its range) after a citation indicates that the species was listed based on its status in a significant portion of its range. If a citation does not include the “(SPR)” notation, it means that the species was listed based on its status throughout its entire range. For “(SPR)” listings, a geographical description of the SPR may be found in the referenced **Federal Register** Notice. The “(SPR)” notation serves an informational purpose only and does not imply any limitation on the

application of the prohibitions or restrictions of the Act or implementing rules. (g) The “Critical habitat” and “ESA rules” columns provide cross-references to other sections in this part and part 226. The term “NA” appearing in the “Critical habitat” column indicates that there are no critical habitat designations for that species; similarly, the term “NA” appearing in the “ESA rules” column indicates that there are no ESA rules for that species. However, all other applicable rules in parts 222 through 226 and part 402 still apply to that species. Also, there may be other rules in this title that relate to such wildlife. The “ESA rules” column is not intended to list all Federal, state, tribal, or local governmental regulations that may apply to the species. (h) The endangered species under the jurisdiction of the Secretary of Commerce are:

Species ¹			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Marine Mammals					
Dolphin, Chinese River (aka baiji).	<i>Lipotes vexillifer</i>	Entire species	54 FR 22906, May 30, 1989.	NA	NA.
Dolphin, South Asian River (Indus River subspecies).	<i>Platanista gangetica minor</i> .	Entire subspecies	55 FR 50835, Dec 11, 1990.	NA	NA.
Porpoise, Gulf of California harbor (aka vaquita or cochito).	<i>Phocoena sinus</i>	Entire species	50 FR 1056, Jan 9, 1985.	NA	NA.
Sea lion, Steller (Western DPS).	<i>Eumetopias jubatus</i>	Steller sea lions born in the wild, west of 144° W. Long. Also, Steller sea lions born in captivity whose mother was born in the wild, west of 144° W. Long., and progeny of these captives.	62 FR 24345, May 5, 1997.	226.202	224.103, 226.202.
Seal, Hawaiian monk ...	<i>Monachus schauinslandi</i> .	Entire species	41 FR 51611, Nov 23, 1976.	226.201	NA.
Seal, Mediterranean monk.	<i>Monachus monachus</i> ...	Entire species	35 FR 8491, Jun 2, 1970.	NA	NA.
Seal, ringed (Ladoga subspecies).	<i>Phoca (=Pusa) hispida ladogensis</i> .	Entire subspecies	77 FR 76706; Dec 28, 2012.	NA	NA.
Seal, ringed (Saimaa subspecies).	<i>Phoca (=Pusa) hispida saimensis</i> .	Entire subspecies	58 FR 26920, May 6, 1993.	NA	NA.
Whale, beluga (Cook Inlet DPS).	<i>Delphinapterus leucas</i>	Beluga whales originating from Cook Inlet, Alaska.	73 FR 62919, Oct 22, 2008.	226.220	NA.
Whale, blue	<i>Balaenoptera musculus</i>	Entire species	35 FR 18319, Dec 2, 1970.	NA	NA.
Whale, bowhead	<i>Balaena mysticetus</i>	Entire species	35 FR 18319, Dec 2, 1970.	NA	NA.
Whale, false killer (Main Hawaiian Islands Insular DPS).	<i>Pseudorca crassidens</i> ..	False killer whales found from nearshore of the main Hawaiian Islands out to 140 km (approximately 75 nautical miles) and that permanently reside within this geographic range.	77 FR 70915, November 28, 2012.	NA	NA.
Whale, fin or finback	<i>Balaenoptera physalus</i>	Entire species	35 FR 8491, Jun 2, 1970.	NA	NA.
Whale, gray (Western North Pacific DPS).	<i>Eschrichtius robustus</i> ...	Western North Pacific (Korean) gray whales	35 FR 8491, Jun 2, 1970; 59 FR 31094, Jun 16, 1994.	NA	NA.
Whale, humpback	<i>Megaptera novaeangliae</i> .	Entire species	35 FR 18319, Dec 2, 1970.	NA	224.103.
Whale, killer (Southern Resident DPS).	<i>Orcinus orca</i>	Killer whales from the J, K, and L pods, except such whales placed in captivity prior to November 2005 and their captive born progeny.	70 FR 69903, Nov 18, 2005.	226.206	224.103.
Whale, North Atlantic right.	<i>Eubalaena glacialis</i>	Entire species	73 FR 12024, Mar 6, 2008.	226.203	224.103, 224.105.
Whale, North Pacific right.	<i>Eubalaena japonica</i>	Entire species	73 FR 12024, Mar 6, 2008.	226.215	224.103.

Species ¹			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Whale, sei	<i>Balaenoptera borealis</i> ..	Entire species	35 FR 18319, Dec 2, 1970.	NA	NA.
Whale, Southern right ..	<i>Eubalaena australis</i>	Entire species	35 FR 18319, Dec 2, 1970.	NA	NA.
Whale, sperm	<i>Physeter macrocephalus</i> (= <i>catodon</i>).	Entire species	35 FR 18319, Dec 2, 1970.	NA	NA.

Sea Turtles²

Sea turtle, green	<i>Chelonia mydas</i>	Breeding colony populations in Florida and on the Pacific coast of Mexico.	43 FR 32800, Jul 28, 1978.	226.208	224.104.
Sea turtle, hawksbill	<i>Eretmochelys imbricata</i>	Entire species	35 FR 8491, Jun 2, 1970.	226.209	224.104.
Sea turtle, Kemp's ridley.	<i>Lepidochelys kempii</i>	Entire species	35 FR 18319, Dec 2, 1970.	NA	224.104.
Sea turtle, leatherback	<i>Dermochelys coriacea</i>	Entire species	35 FR 8491, Jun 2, 1970.	226.207	224.104.
Sea turtle, loggerhead (Mediterranean Sea DPS).	<i>Caretta caretta</i>	Loggerhead sea turtles originating from the Mediterranean Sea.	76 FR 58868, Sep 22, 2011.	NA	224.104.
Sea turtle, loggerhead (North Indian Ocean DPS).	<i>Caretta caretta</i>	Loggerhead sea turtles originating from the North Indian Ocean.	76 FR 58868, Sep 22, 2011.	NA	224.104.
Sea turtle, loggerhead (North Pacific Ocean DPS).	<i>Caretta caretta</i>	Loggerhead sea turtles originating from the North Pacific Ocean.	76 FR 58868, Sep 22, 2011.	NA	224.104.
Sea turtle, loggerhead (Northeast Atlantic Ocean DPS).	<i>Caretta caretta</i>	Loggerhead sea turtles originating from the Northeast Atlantic Ocean east of 40° W. Long., except in the vicinity of the Strait of Gibraltar where the eastern boundary is 5°36' W. Long.	76 FR 58868, Sep 22, 2011.	NA	224.104.
Sea turtle, loggerhead (South Pacific Ocean DPS).	<i>Caretta caretta</i>	Loggerhead sea turtles originating from the South Pacific Ocean west of 67° W. Long., and east of 141° E. Long.	76 FR 58868, Sep 22, 2011.	NA	224.104.
Sea turtle, olive ridley ...	<i>Lepidochelys olivacea</i> ..	Breeding colony populations on the Pacific coast of Mexico.	43 FR 32800, Jul 28, 1978.	NA	224.104.

Fishes

Bocaccio (Puget Sound/ Georgia Basin DPS).	<i>Sebastes paucispinis</i> ...	Bocaccio originating from Puget Sound and the Georgia Basin.	75 FR 22276, Apr 28, 2010.	NA	NA.
Salmon, Atlantic (Gulf of Maine DPS).	<i>Salmo salar</i>	Naturally spawned Atlantic salmon originating from the Gulf of Maine, including such Atlantic salmon originating from watersheds from the Androscoggin River northward along the Maine coast to the Dennys River. Also, Atlantic salmon from two artificial propagation programs: Green Lake National Fish Hatchery (GLNFH) and Craig Brook National Fish Hatchery (CBNFH). This DPS does not include landlocked salmon and those salmon raised in commercial hatcheries for aquaculture.	74 FR 29344, Jun 19, 2009.	226.217	NA.
Salmon, Chinook (Sacramento River winter-run ESU).	<i>Oncorhynchus tshawytscha</i> .	Naturally spawned winter-run Chinook salmon originating from the Sacramento River and its tributaries. Also, winter-run Chinook salmon from one artificial propagation program: the Livingston Stone National Fish Hatchery.	70 FR 37160, Jun 28, 2005.	226.204	NA.
Salmon, Chinook (Upper Columbia River spring-run ESU).	<i>Oncorhynchus tshawytscha</i> .	Naturally spawned spring-run Chinook salmon originating from Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam (excluding the Okanogan River subbasin). Also, spring-run Chinook salmon from six artificial propagation programs: the Twisp River Program; Chewuch River Program; Methow Program; Winthrop National Fish Hatchery Program; Chiwawa River Program; and the White River Program.	70 FR 37160, Jun 28, 2005.	226.212	NA.
Salmon, coho (Central California Coast ESU).	<i>Oncorhynchus kisutch</i> ..	Naturally spawned coho salmon originating from rivers south of Punta Gorda, California to and including Aptos Creek, as well as such coho salmon originating from tributaries to San Francisco Bay. Also, coho salmon from three artificial propagation programs: the Don Clausen Fish Hatchery Captive Broodstock Program; the Scott Creek/King Fisher Flats Conservation Program; and the Scott Creek Captive Broodstock Program.	70 FR 37160, Jun 28, 2005; 77 FR 19552, Apr 2, 2012.	226.210	NA.

Species ¹			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Salmon, sockeye (Snake River ESU).	<i>Oncorhynchus nerka</i>	Naturally spawned anadromous and residual sockeye salmon originating from the Snake River basin. Also, sockeye salmon from one artificial propagation program: the Redfish Lake Captive Broodstock Program.	70 FR 37160, Jun 28, 2005.	226.205	NA.
Sawfish, largetooth	<i>Pristis perotteti</i>	Entire species	76 FR 40835, Jul 12, 2011.	NA	NA.
Sawfish, smalltooth (United States DPS).	<i>Pristis pectinata</i>	Smalltooth sawfish originating from U.S. waters	68 FR 15674, Apr 1, 2003.	226.218	NA.
Steelhead (Southern California DPS).	<i>Oncorhynchus mykiss</i> ..	Naturally spawned anadromous <i>O. mykiss</i> (steelhead) originating below natural and manmade impassable barriers from the Santa Maria River to the U.S.-Mexico Border.	71 FR 834, Jan 5, 2006	226.211	NA.
Sturgeon, Atlantic (Atlantic subspecies; Carolina DPS).	<i>Acipenser oxyrinchus oxyrinchus</i> .	Atlantic sturgeon originating from watersheds (including all rivers and tributaries) from Albemarle Sound southward along the southern Virginia, North Carolina, and South Carolina coastal areas to Charleston Harbor.	77 FR 5914, Feb 6, 2012.	NA	NA.
Sturgeon, Atlantic (Atlantic subspecies; Chesapeake Bay DPS).	<i>Acipenser oxyrinchus oxyrinchus</i> .	Anadromous Atlantic sturgeon originating from watersheds that drain into the Chesapeake Bay and into coastal waters from the Delaware-Maryland border on Fenwick Island to Cape Henry, Virginia.	77 FR 5880, Feb 6, 2012.	NA	NA.
Sturgeon, Atlantic (Atlantic subspecies; New York Bight DPS).	<i>Acipenser oxyrinchus oxyrinchus</i> .	Anadromous Atlantic sturgeon originating from watersheds that drain into coastal waters, including Long Island Sound, the New York Bight, and Delaware Bay, from Chatham, Massachusetts to the Delaware-Maryland border on Fenwick Island.	77 FR 5880, Feb 6, 2012.	NA	NA.
Sturgeon, Atlantic (Atlantic subspecies; South Atlantic DPS).	<i>Acipenser oxyrinchus oxyrinchus</i> .	Atlantic sturgeon originating from watersheds (including all rivers and tributaries) of the ACE (Ashepoo, Combahee, and Edisto) Basin southward along the South Carolina, Georgia, and Florida coastal areas to the St. Johns River, Florida.	77 FR 5914, Feb 6, 2012.	NA	NA.
Sturgeon, shortnose	<i>Acipenser brevirostrum</i>	Entire species	32 FR 4001, Mar 11, 1967.	NA	NA.
Totoaba	<i>Cynoscion macdonaldi</i>	Entire species	44 FR 29480, May 21, 1979.	NA	NA.
Molluscs					
Abalone, black	<i>Haliotis cracherodii</i>	Entire species	74 FR 1937, Jan 14, 2009.	226.221	NA.
Abalone, white	<i>Haliotis sorenseni</i>	Entire species	66 FR 29054, May, 29, 2001.	NA	NA.

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

² Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

[FR Doc. 2014-08347 Filed 4-11-14; 8:45 am]

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Proposed Rules

Federal Register

Vol. 79, No. 71

Monday, April 14, 2014

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA-2014-0240; Notice No. 25-14-02-SC]

Special Conditions: Embraer S.A.; Model EMB-550 Airplane; Stowage Compartment Fire Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Embraer S.A. Model EMB-550 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology and design envisioned in the airworthiness standards for transport category airplanes. This design feature is the installation of a stowage compartment in the lavatory to store passenger belongings. The isolation of this stowage compartment from the main cabin could hinder the ability of the flight crew to detect a fire. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before May 14, 2014.

ADDRESSES: Send comments identified by docket number FAA-2014-0240 using any of the following methods:

- Federal eRegulations Portal: Go to <http://www.regulations.gov/> and follow the online instructions for sending your comments electronically.

- Mail: Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West

Building Ground Floor, Washington, DC, 20590-0001.

- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

- Fax: Fax comments to Docket Operations at 202-493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov/>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov/>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert C. Jones, FAA, Propulsion and Mechanical Systems Branch, ANM-112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057-3356; telephone (425) 227-1234; facsimile (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

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

Background

On May 14, 2009, Embraer S.A. applied for a type certificate for its new Model EMB-550 airplane. The Model EMB-550 airplane is the first of a new family of jet airplanes designed for corporate flight, fractional, charter, and private owner operations. The airplane has a configuration with low wing and T-tail empennage. The primary structure is metal with composite empennage and control surfaces. The Model EMB-550 airplane is designed for 8 passengers, with a maximum of 12 passengers. It is equipped with two Honeywell AS907-3-1E medium bypass ratio turbofan engines mounted on aft fuselage pylons. Each engine produces approximately 6,540 pounds of thrust for normal takeoff. The primary flight controls consist of hydraulically powered fly-by-wire elevators, ailerons, and rudders controlled by the pilot or copilot sidestick.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Embraer S.A. must show that the Model EMB-550 meets the applicable provisions of part 25, as amended by Amendments 25-1 through 25-127 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model EMB-550 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model EMB-550 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92-574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of

the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model EMB-550 will incorporate the following novel or unusual design features: A stowage compartment located in the lavatory designed to store passenger belongings. The stowage compartment may be isolated from the main passenger cabin by two doors (lavatory and stowage compartment doors), which could hinder the ability to detect smoke or fire. The installation of a stowage compartment in the lavatory is a novel and unusual design feature for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards.

Discussion

Embraer did not classify the EMB-550 stowage compartment in the aft part of the pressurized area as a Class B cargo compartment due to its relatively small volume of 37 cubic feet. The compartment has a door that is intended to be closed in all phases of flight but can be opened to allow passenger access during flight. The lavatory door must be kept open for takeoff and landing but will likely be kept closed in all other phases of flight.

Due to the facts that the stowage compartment is not classified as a Class B cargo compartment and may be isolated from the main cabin by two doors during flight, and considering that it will be used to store passenger belongings, existing requirements for stowage compartments are not adequate to address fire protection concerns. The isolation characteristics and the possibility of storing items that may start a fire create the potential for an undetected fire event.

Additional safety precautions are required to avoid a situation where a fire condition remains undetected in an isolated stowage compartment. The proposed additional safety standards in the stowage compartment compensate for the increased risk of an undetected fire.

Applicability

As discussed above, these special conditions are applicable to the Embraer Model EMB-550. Should Embraer S.A. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model

of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Embraer S.A. Model EMB-550.

1. Stowage Compartment Fire Protection.

a. A means for fire detection that meets the provisions of § 25.858 is required regardless of the fact that the compartment is not classified as a cargo compartment per § 25.857 (only a “stowage” compartment). A visual and audible indication of smoke detection that clearly identifies that smoke has been detected in the stowage compartment must be provided to the flight or cabin crew.

b. In addition to the requirements of § 25.851, at least one hand-held or manually-activated compartment fire extinguisher appropriate to the kinds of fires likely to occur and, if applicable, associated protective breathing equipment must be provided in the lavatory.

c. Sufficient access must be provided to enable a crew member to effectively reach any part of the stowage compartment with the content of a hand-held fire extinguisher.

d. When the access provisions are being used, no hazardous quantity of smoke, flames, or extinguishing agent will enter any compartment occupied by the crew or passengers.

e. A liner must be provided that meets the requirements of § 25.855 at Amendment 25-60 for a Class B cargo compartment unless it can be shown that the material used to construct the stowage compartment meets the flammability requirements by a 60-second vertical test in lieu of 12-second vertical test and by presenting past test results of typical panels that meet the 45-degree flame penetration test.

Issued in Renton, Washington, on April 8, 2014.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014-08269 Filed 4-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2014-0227; Directorate Identifier 2013-NM-211-AD]

RIN 2120-AA64

Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 95-26-11, which applies to all Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model L-1011 series airplanes. AD 95-26-11 currently requires inspections to detect cracking of the fittings that attach the aft pressure bulkhead to the fuselage stringers, inspections to detect cracking of the fittings and of the splice tab of the aft pressure bulkhead, and corrective actions if necessary. Since we issued AD 95-26-11, we have determined that the fittings at stringer attachments to the upper region of the aft pressure bulkhead are subject to widespread fatigue damage (WFD), which could result in cracking in the aft pressure bulkhead. This proposed AD would reduce the compliance time; add inspections for cracking of certain aft fuselage skin panels; add a structural modification; and also add a post modification inspection program. We are proposing this AD to prevent simultaneous failure of multiple stringer end fittings through fatigue cracking at the aft pressure bulkhead, which could lead to rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by May 29, 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 Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, L1011 Technical Support Center, Dept. 6A4M, Zone 0579, 86 South Cobb Drive, Marietta, GA 30063-0579; telephone 770-494-5444; fax 770-494-5445; email L1011.support@lmco.com; Internet <http://www.lockheedmartin.com/ams/tools/TechPubs.html>. 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> by searching for and locating Docket No. FAA-2014-0227; 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: Carl Gray, Aerospace Engineer, Airframe Branch, ACE-117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404-474-5554; fax: 404-474-5605; email: Carl.W.Gray@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-2014-0227; Directorate Identifier 2013-NM-211-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

Structural fatigue damage is progressive. It begins as minute cracks, and those cracks grow under the action of repeated stresses. This can happen because of normal operational conditions and design attributes, or because of isolated situations or incidents such as material defects, poor fabrication quality, or corrosion pits, dings, or scratches. Fatigue damage can occur locally, in small areas or structural design details, or globally. Global fatigue damage is general degradation of large areas of structure with similar structural details and stress levels. Multiple-site damage is global damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Global damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site-damage and multiple-element-damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane, in a condition known as WFD. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that design approval holders (DAHs) establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose

LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

On December 18, 1995, we issued AD 95-26-11, Amendment 39-9469 (60 FR 66870, December 27, 1995), for all Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model L-1011 series airplanes. AD 95-26-11 requires repetitive inspections to detect cracking of the fittings that attach the aft pressure bulkhead to the fuselage stringers, repetitive inspections to detect cracking of the fittings and of the splice tab of the aft pressure bulkhead, and corrective actions if necessary. AD 95-26-11 was prompted by the results of the visual inspections performed in accordance with AD 95-18-52; the inspection results indicated that the visual inspections were inadequate to detect fatigue cracking. AD 95-26-11 superseded AD 95-18-52, Amendment 39-9366 (60 FR 47465, September 13, 1995).

Actions Since AD 95-26-11, Amendment 39-9469 (60 FR 66870, December 27, 1995) Was Issued

Since we issued AD 95-26-11, Amendment 39-9469 (60 FR 66870, December 27, 1995), we have determined that the fittings at stringer attachments to the upper region of the aft pressure bulkhead are subject to WFD. If cracks in the stringer end fittings remain undetected, the cracks will propagate until the end fitting is severed. The load in the severed fitting redistributes to the adjacent fittings and, if those fittings have undetected cracks, the increased load will cause those cracks to propagate at a faster rate than the first fitting. This process continues until there are multiple damaged fittings adjacent to one another at which point the membrane and discontinuity loads in the aft pressure dome are redistributed to the fuselage skin by shear-bending of the vertical leg of the aft pressure bulkhead ring inner and outer tee caps. This bending induces a circumferential fatigue crack in the tee cap vertical leg. Once this crack reaches its critical length, the result is a rapid decompression of the airplane during flight.

Relevant Service Information

We reviewed Lockheed Service Bulletin 093-53-105, Revision 3, dated

May 31, 2013. This service bulletin describes, among other things, procedures for the following actions.

- For airplanes with a large (47-inch-wide) aft passenger door, a borescope inspection for cracking of the end fittings at stringer locations 12, 13, 53, and 54.
- For airplanes with a large aft passenger door, an eddy current surface scan (ECSS) inspection for cracking of the left and right aft fuselage skin panels and related investigative and corrective action. The related investigative actions include bolt hole eddy current (BHEC), ECSS, and borescope inspections. The corrective actions include repairs.
- For all airplanes, a structural modification consisting of removing and replacing all stringer end fittings at stringers 1 through 14, and 52 through 64. This modification is preceded by an ECSS inspection to detect cracking of the lower (or inner) surface of the upper bonded splice tab of the bulkhead assembly; and a BHEC inspection for cracking of the six fastener holes in the inner tee cap forward flange.
- For all airplanes, a repetitive post-structural modification inspection program consisting of the inspections and, if necessary, the related investigative and corrective actions, specified in paragraph (e) of AD 95–26–11, Amendment 39–9469 (60 FR 66870, December 27, 1995); and end fitting and skin panel inspections, and the related investigative and corrective actions mentioned previously if necessary.

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.

Proposed AD Requirements

This proposed AD would retain certain requirements of AD 95–26–11, Amendment 39–9469 (60 FR 66870, December 27, 1995). This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under “Differences Between this AD and the Service Information.”

Change to AD 95–26–11, Amendment 39–9469 (60 FR 66870, December 27, 1995)

Since AD 95–26–11, Amendment 39–9469 (60 FR 66870, December 27, 1995) was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 95–26–11, amendment 39–9469 (60 FR 66870, December 27, 1995)	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (g).
paragraph (c)	paragraph (h).
paragraph (d)	paragraph (i).
paragraph (e)	paragraph (j).
paragraph (f)	paragraph (l).
paragraph (g)	paragraph (m).

Differences Between This Proposed AD and the Service Information

Although Lockheed Service Bulletin 093–53–105, Revision 3, dated May 31, 2013, specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions in accordance with a method approved by the FAA.

Explanation of Compliance Time

The compliance time for the modification specified in this proposed AD for addressing WFD was established to ensure that discrepant structure is modified before WFD develops in airplanes. Standard inspection techniques cannot be relied on to detect WFD before it becomes a hazard to flight. We will not grant any extensions of the compliance time to complete any AD-mandated service bulletin related to WFD without extensive new data that would substantiate and clearly warrant such an extension.

Costs of Compliance

We estimate that this proposed AD affects 26 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
Inspections [actions retained from AD 95–26–11, Amendment 39–9469 (60 FR 66870, December 27, 1995)].	23 work-hours × \$85 per hour = \$1,955 per inspection cycle.	\$0	\$1,955 per inspection cycle ..	\$50,830 per inspection cycle.
Inspections and modification [new proposed action].	185 work-hours × \$85 per hour = \$15,725.	\$6,750	\$22,475	\$584,350.

We estimate the following costs to do any necessary replacements that would

be required based on the results of the proposed inspection. We have no way of

determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of one fitting	16 work-hour × \$85 per hour = \$1,360	\$250	\$1,610

We have received no definitive data that would enable us to provide cost

estimates for the other 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 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. Amend § 39.13 by removing Airworthiness Directive (AD) 95–26–11,

Amendment 39–9469 (60 FR 66870, December 27, 1995), and adding the following new AD:

Lockheed Martin Corporation/Lockheed Martin Aeronautics Company: Docket No. FAA–2014–0227; Directorate Identifier 2013–NM–211–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by May 29, 2014.

(b) Affected ADs

This AD supersedes AD 95–26–11, Amendment 39–9469 (60 FR 66870, December 27, 1995).

(c) Applicability

This AD applies to all Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, and L–1011–385–3 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a determination that the fittings at stringer attachments to the upper region of the aft pressure bulkhead are subject to widespread fatigue damage (WFD). We are issuing this AD to prevent simultaneous failure of multiple stringer end fittings through fatigue cracking at the aft pressure bulkhead, which could lead to rapid decompression of the airplane.

(f) Compliance

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

(g) Retained Detailed Visual Inspection

This paragraph restates the requirements of paragraph (a) of AD 95–26–11, Amendment 39–9469 (60 FR 66870, December 27, 1995), with no changes. Perform a detailed visual inspection to detect cracking of the fittings that attach the aft pressure bulkhead to the fuselage stringers (hereinafter referred to as "fittings") at stringers 1 through 10 (right side) and at stringers 56 through 64 (left side), at the later of the times specified in either paragraph (g)(1) or (g)(2) of this AD.

(1) Prior to the accumulation of 20,000 total flight cycles; or

(2) Within the next 25 flight cycles or 10 days after September 28, 1995 (the effective date of AD 95–18–52, Amendment 39–9366 (60 FR 47465, September 13, 1995)), whichever occurs earlier.

(h) Retained Corrective Action for Cracked Fitting

This paragraph restates the requirements of paragraph (c) of AD 95–26–11, Amendment 39–9469 (60 FR 66870, December 27, 1995), with no changes. If any cracked fitting is detected during the inspection required by paragraph (g) of this AD: Before further flight, accomplish the requirements of paragraphs (h)(1) and (h)(2) of this AD.

(1) Replace the cracked fitting with a new fitting, or with a serviceable fitting on which

a detailed visual inspection has been performed previously to detect cracking and that has been found to be free of cracks.

(2) Perform a detailed visual inspection to detect cracking in the radius at the lower end of the vertical leg of the bulkhead T-shaped frame between the stringer locations on either side of the stringer having the cracked fitting. If any cracked T-shaped frame is detected: Before further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA.

(i) Retained Repetitive Fitting Inspections

This paragraph restates the requirements of paragraph (d) of AD 95–26–11, Amendment 39–9469 (60 FR 66870, December 27, 1995), with no changes. Repeat the inspections and other necessary actions required by paragraphs (g) and (h) of this AD at intervals not to exceed 1,800 flight cycles or 3,000 flight hours, whichever occurs earlier, until paragraph (j) of this AD is accomplished.

(j) Retained Eddy Current Surface Scan (ECSS) Inspections, and Related Investigative and Corrective Actions

This paragraph restates the requirements of paragraph (e) of AD 95–26–11, Amendment 39–9469 (60 FR 66870, December 27, 1995), with revised compliance times specified in paragraph (k) of this AD, exclusion of an ECSS inspection for certain airplanes, and new service information. Except as provided by paragraph (l) of this AD: At the applicable time specified in paragraph (k)(1) of this AD, accomplish the requirements of paragraphs (j)(1) and (j)(2) of this AD. Repeat the ECSS inspections thereafter at the compliance time specified in paragraph (k)(2) of this AD. Accomplishment of the ECSS inspection constitutes terminating action for the repetitive inspection requirements of paragraph (i) of this AD.

(1) Perform an ECSS inspection to detect cracking of the fittings at stringers 1 through 14 (right side) and at stringers 52 through 64 (left side), in accordance with the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–105, Revision 1, dated November 17, 1995; or Lockheed L–1011 Service Bulletin 093–53–105, Revision 3, dated May 31, 2013; except for airplanes with a large (47-inch-wide) aft passenger door, an ECSS inspection of stringers 12, 13, 53, and 54 is not required by this paragraph. Except as provided by paragraph (m) of this AD, if any cracking is detected, prior to further flight, replace the fitting with a new fitting without pilot holes, rework the fitting, and perform various follow-on actions (i.e., bolt hole eddy current, ECSS, and borescope inspections; and repair) of the inner and outer tee caps, in accordance with the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–105, Revision 1, dated November 17, 1995; or Lockheed L–1011 Service Bulletin 093–53–105, Revision 3, dated May 31, 2013, except as required by paragraph (p) of this AD. As of the effective date of this AD, use only Lockheed L–1011 Service Bulletin 093–53–105, Revision 3, dated May 31, 2013, for accomplishing the actions required by this paragraph.

(2) Perform an ECSS inspection to detect cracking of the lower (or inner) surface of the

upper bonded splice tab of the bulkhead assembly at stringers 1 through 14 (right side) and at stringers 52 through 64 (left side), in accordance with the Accomplishment Instructions of Lockheed L-1011 Service Bulletin 093-53-105, Revision 1, dated November 17, 1995; or Lockheed L-1011 Service Bulletin 093-53-105, Revision 3, dated May 31, 2013. As of the effective date of this AD, use only Lockheed L-1011 Service Bulletin 093-53-105, Revision 3, dated May 31, 2013, for accomplishing the actions required by this paragraph.

(i) Except as provided by paragraph (m) of this AD, if any cracking is detected at the upper bonded splice tab, repair in accordance with a method approved by the Manager, Atlanta ACO, FAA.

(ii) Except as provided by paragraph (m) of this AD, if any cracking is detected at a fastener, prior to further flight, perform a bolt hole eddy current (BHEC) inspection to detect cracking of the forward flange of the inner tee cap, in accordance with the Accomplishment Instructions of Lockheed L-1011 Service Bulletin 093-53-105, Revision 1, dated November 17, 1995; or Lockheed L-1011 Service Bulletin 093-53-105, Revision 3, dated May 31, 2013. If any cracking is detected, prior to further flight, repair in accordance with the Accomplishment Instructions of Lockheed L-1011 Service Bulletin 093-53-105, Revision 1, dated November 17, 1995; or Lockheed L-1011 Service Bulletin 093-53-105, Revision 3, dated May 31, 2013, except as required by paragraph (p) of this AD. As of the effective date of this AD, use only Lockheed L-1011 Service Bulletin 093-53-105, Revision 3, dated May 31, 2013, for accomplishing the actions required by this paragraph.

(k) Revised Compliance Times for Paragraph (j) of This AD

(1) Do the initial inspections required by paragraph (j) of this AD at the earlier of the times specified in paragraphs (k)(1)(i) and (k)(1)(ii) of this AD.

(i) Prior to the accumulation of 20,000 total flight cycles, or within 30 days after January 11, 1996 (the effective date of AD 95-26-11, Amendment 39-9469 (60 FR 66870, December 27, 1995)), whichever occurs later.

(ii) At the later of the times specified in paragraphs (k)(1)(ii)(A) and (k)(1)(ii)(B) of this AD.

(A) Before the accumulation of 13,875 total flight cycles.

(B) Within 365 days or 1,000 flight cycles after the effective date of this AD, whichever occurs first.

(2) Repeat the inspections specified in paragraph (j) of this AD within 2,500 flight cycles after accomplishing the most recent inspection required by paragraph (j) of this AD, and repeat the inspection thereafter at intervals not to exceed 1,750 flight cycles.

(l) Retained Inspection Deferral for Paragraph (j) of This AD

This paragraph restates the requirements of paragraph (f) of AD 95-26-11, Amendment 39-9469 (60 FR 66870, December 27, 1995). Accomplishment of the initial ECSS inspections required by paragraph (j) of this AD may be deferred to a date within 120 days

after January 11, 1996 (the effective date of date of AD 95-26-11, Amendment 39-9469 (60 FR 66870, December 27, 1995)), provided that, in the interim, a visual inspection as specified in paragraph (g) of this AD is accomplished within 30 days after January 11, 1996 (the effective date of date of AD 95-26-11), and repeated thereafter at intervals not to exceed 50 flight cycles. Once the ECSS inspections begin, the visual inspections may be terminated.

(m) Retained Inspection Deferral With Revised Compliance Time and New Deferral

This paragraph restates the requirements of paragraph (g) of AD 95-26-11, Amendment 39-9469 (60 FR 66870, December 27, 1995), with a revised compliance time, service information, and a new deferred action.

(1) If two or more adjacent fittings on both sides of the cracked fittings or bonded splice tabs/fasteners are determined to be free of cracks by the ECSS inspection required by paragraphs (j)(1) and (j)(2) of this AD, repeat the ECSS inspection of the adjacent fittings thereafter at intervals not to exceed 600 flight cycles until the cracked fittings or splice tabs/fasteners are replaced or repaired, in accordance with the Accomplishment Instructions of Lockheed L-1011 Service Bulletin 093-53-105, Revision 1, dated November 17, 1995; or Lockheed L-1011 Service Bulletin 093-53-105, Revision 3, dated May 31, 2013. At the applicable time specified in paragraphs (m)(1)(i) and (m)(1)(ii) of this AD: Replace the cracked fitting and/or splice tab/fasteners, in accordance with the Accomplishment Instructions of Lockheed L-1011 Service Bulletin 093-53-105, Revision 1, dated November 17, 1995; or Lockheed L-1011 Service Bulletin 093-53-105, Revision 3, dated May 31, 2013. As of the effective date of this AD, use only Lockheed L-1011 Service Bulletin 093-53-105, Revision 3, dated May 31, 2013, for accomplishing the actions required by this paragraph.

(i) For any crack found before the effective date of this AD: Within 2,500 flight cycles after finding the crack.

(ii) For any crack found on or after the effective date of this AD: Within 1,750 flight cycles after finding the crack, but no later than before the accumulation of 20,800 total flight cycles.

(2) If two or more adjacent fittings on both sides of the cracked fittings or bonded splice tabs/fasteners are determined to be free of cracks by the ECSS inspection required by paragraphs (j)(1) and (j)(2) of this AD, the follow-on inspection (i.e., bolt hole eddy current, ECSS, and borescope inspections) of the inner and outer tee caps required by paragraph (j)(1) of this AD may also be deferred until the cracked fittings are replaced as required by paragraph (m)(1) of this AD, but no later than before the accumulation of 20,800 total flight cycles.

(n) New Repetitive Borescope Inspections of Certain End Fittings and Corrective Actions

For airplanes with a large (47-inch-wide) aft passenger door: At the later of the times specified in paragraphs (n)(1) and (n)(2) of this AD, do a borescope inspection for cracking of the stringer end fittings at stringer

locations 12, 13, 53, and 54; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093-53-105, Revision 3, dated May 31, 2013; except as specified in paragraph (p) of this AD. Do all applicable related investigative and corrective actions before further flight, except as provided by paragraph (q) of this AD. Repeat the inspection of the stringer end fittings thereafter at intervals not to exceed 1,750 flight cycles until the actions required by paragraph (r) of this AD have been done.

(1) Before the accumulation of 13,875 total flight cycles.

(2) Within 365 days or 1,000 flight cycles after the effective date of this AD, whichever occurs earlier.

(o) New Repetitive Borescope Inspections of Fuselage Skin Panels

For airplanes with a large (47-inch-wide) aft passenger door: At the later of the times specified in paragraphs (o)(1) and (o)(2) of this AD, do an ECSS inspection for cracking of the left and right aft fuselage skin panels; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093-53-105, Revision 3, dated May 31, 2013; except as specified in paragraph (p) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection of the aft fuselage skin panels thereafter at intervals not to exceed 1,750 flight cycles until the actions required by paragraph (q) of this AD have been done.

(1) Before the accumulation of 13,875 total flight cycles.

(2) Within 365 days or 1,000 flight cycles after the effective date of this AD, whichever occurs first.

(p) New Service Information Exception

If any cracking is found during any inspection required by this AD, and Lockheed Service Bulletin 093-53-105, Revision 3, dated May 31, 2013, specifies contacting Lockheed for appropriate action: Before further flight, repair the cracking in accordance with a method approved by the Manager, Atlanta ACO, FAA. As of the effective date of this AD, for a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(q) New Deferral

(1) If two or more adjacent fittings on both sides of the cracked fittings or bonded splice tabs/fasteners are determined to be free of cracks by the ECSS inspection required by paragraph (o) of this AD, repeat the ECSS inspection of the adjacent fittings thereafter at intervals not to exceed 600 flight cycles until the cracked fittings or splice tabs/fasteners are replaced or repaired, in accordance with the Accomplishment Instructions of Lockheed L-1011 Service Bulletin 093-53-105, Revision 3, dated May 31, 2013. Within 1,750 flight cycles after finding the crack, but no later than before the accumulation of 20,800 total flight cycles, replace the cracked fitting and/or splice tab/

fasteners, in accordance with the Accomplishment Instructions of Lockheed L-1011 Service Bulletin 093-53-105, Revision 3, dated May 31, 2013.

(2) If two or more adjacent fittings on both sides of the cracked fittings or bonded splice tabs/fasteners are determined to be free of cracks by the ECSS inspection required by paragraph (o) of this AD, the related investigative actions (inspections of the inner and outer tee caps) required by paragraph (n) of this AD may also be deferred until the cracked fittings are replaced as required by paragraph (q)(1) of this AD, but no later than before the accumulation of 20,800 total flight cycles.

(r) New Pre-structural Modification Inspections and Structural Modification

Before the accumulation of 20,800 total flight cycles: Do the applicable actions specified in paragraphs (r)(1) and (r)(2) of this AD.

(1) Perform pre-structural modification inspections by doing the actions required by paragraphs (j), (n), and (o) of this AD.

(2) Perform a structural modification of the aft pressure bulkhead by removing and replacing all stringer end fittings with new or refurbished fittings at stringers 1 through 14, and 52 through 64, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093-53-105, Revision 3, dated May 31, 2013.

(s) New Post-structural Modification Repetitive Inspections

Within 13,875 flight cycles after performing the actions required by paragraph (r)(2) of this AD: Do the actions specified in paragraphs (j), (n), and (o) of this AD, and repeat thereafter at intervals not to exceed 13,875 flight cycles.

(t) No Reporting Requirement

Although Lockheed Service Bulletin 093-53-105, Revision 3, dated May 31, 2013, referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(u) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta 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 (v)(1) 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.

(v) Related Information

(1) For more information about this AD, contact Carl Gray, Aerospace Engineer, Airframe Branch, ACE-117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404-474-5554; fax: 404-474-5605; email: carl.w.gray@faa.gov.

(2) For service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, L1011 Technical Support Center, Dept. 6A4M, Zone 0579, 86 South Cobb Drive, Marietta, GA 30063-0579; telephone 770-494-5444; fax 770-494-5445; email L1011.support@lmco.com; Internet <http://www.lockheedmartin.com/ams/tools/TechPubs.html>. 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.

Issued in Renton, Washington, on April 4, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014-08302 Filed 4-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2014-0195; Directorate Identifier 2013-NM-195-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 Directive (AD) 2008-17-03, which applies to certain The Boeing Company Model 737-100, -200, -200C, -300, -400, and -500 series airplanes. AD 2008-17-03 currently requires repetitive inspections to detect fuselage frame cracking, and corrective action if necessary. AD 2008-17-03 also provides for optional terminating action (repair/preventive change) for the repetitive inspections. Since we issued AD 2008-17-03, we have determined that additional airplanes may be subject to the identified unsafe condition. This proposed AD would add airplanes to the applicability. For the newly added airplanes, however, this proposed AD would not provide terminating action for the repetitive inspections because service information has not been provided for a repair/preventive change. We are proposing this AD to detect and correct fuselage frame cracking, which could prevent the left forward entry door from sealing correctly, and could cause in-flight decompression of the airplane.

DATES: We must receive comments on this proposed AD by May 29, 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, P.O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2014-0195; 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: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6450; fax: 425-917-6590; email: alan.pohl@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-2014-0195; Directorate Identifier 2013-NM-195-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 August 6, 2008, we issued AD 2008-17-03, Amendment 39-15641 (73 FR 48288, August 19, 2008), for certain The Boeing Company Model 737-100, -200, -200C, -300, -400, and -500 series airplanes. AD 2008-17-03 required repetitive inspections to detect cracking of the body station 303.9 frame, and corrective action if necessary. AD 2008-17-03 also provided for optional terminating action for the repetitive inspections. AD 2008-17-03 resulted from reports of cracks found at the cutout in the web of body station frame 303.9 inboard of stringer 16L. We issued AD 2008-17-03 to detect and correct such cracking, which could prevent the left forward entry door from sealing correctly, and could cause in-flight decompression of the airplane.

Actions Since AD 2008-17-03, Amendment 39-15641 (73 FR 48288, August 19, 2008), Was Issued

Since we issued AD 2008-17-03, Amendment 39-15641 (73 FR 48288, August 19, 2008), we have been advised that cracking has been discovered on an airplane outside the applicability of AD 2008-17-03.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 737-53A1188, Revision 3, dated September 6, 2013. For information on the procedures and compliance times, see this service information at <http://www.regulations.gov> by searching for Docket No. FAA-2014-0195.

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.

Proposed AD Requirements

This proposed AD would retain the requirements of AD 2008-17-03, Amendment 39-15641 (73 FR 48288, August 19, 2008). This proposed AD would add airplanes to the applicability. This proposed AD would require accomplishing the actions

specified in the service information described previously, except as discussed under “Differences Between the Proposed AD and the Service Information.”

The phrase “corrective actions” is used in this proposed AD. “Corrective actions” correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between the Proposed AD and the Service Information

The service information specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 148 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS: REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	31 to 33 work-hours × \$85 per hour = up to \$2,805 per inspection cycle.	\$0	Up to \$2,805 per inspection cycle.	Up to \$415,140 per inspection cycle.

ESTIMATED COSTS: OPTIONAL MODIFICATION

Action	Labor cost	Parts cost	Cost per product
Repair/preventive change	12 to 30 work-hours × \$85 per hour = up to \$2,550	\$564 to \$2,236	Up to \$4,786.

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 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. Amend § 39.13 by removing Airworthiness Directive (AD) 2008–17–03, Amendment 39–15641 (73 FR 48288, August 19, 2008), and adding the following new AD:

The Boeing Company: Docket No. FAA–2014–0195; Directorate Identifier 2013–NM–195–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by May 29, 2014.

(b) Affected ADs

This AD supersedes AD 2008–17–03, Amendment 39–15641 (73 FR 48288, August 19, 2008).

(c) Applicability

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

(1) Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, as identified in Boeing Alert Service Bulletin 737–53A1197, dated August 25, 2006.

(2) Model 737–300, –400, and –500 series airplanes, as identified in Boeing Alert Service Bulletin 737–53A1188, Revision 3, dated September 6, 2013.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracks found at the cutout in the web of body station frame 303.9 inboard of stringer 16L, and a new report of cracking found on an airplane not included in the applicability of AD 2008–

17–03, Amendment 39–15641 (73 FR 48288, August 19, 2008). We are issuing this AD to detect and correct such cracking, which could prevent the left forward entry door from sealing correctly, and could cause in-flight decompression of the airplane.

(f) Compliance

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

(g) Retained Repetitive Inspections: Group 1 Airplanes, Boeing Alert Service Bulletin 737–53A1188, Revision 2, Dated May 9, 2007, or Boeing Alert Service Bulletin 737–53A1188, Revision 3, Dated September 6, 2013, With Revised Service Information

This paragraph restates the requirements of paragraph (f) of AD 2008–17–03, Amendment 39–15641 (73 FR 48288, August 19, 2008), with revised service information and airplane groupings. For airplanes identified as Group 1 in Boeing Alert Service Bulletin 737–53A1188, Revision 3, dated September 6, 2013: Do detailed and high frequency eddy current (HFEC) inspections in the web and doubler around the slotted holes in the frame web at stringers 15L and 16L, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1188, Revision 2, dated May 9, 2007; or Boeing Alert Service Bulletin 737–53A1188, Revision 3, dated September 6, 2013. Do the inspections at the applicable time specified in paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 737–53A1188, Revision 3, dated September 6, 2013. Do all applicable corrective actions before further flight in accordance with Boeing Alert Service Bulletin 737–53A1188, Revision 2, dated May 9, 2007; or Boeing Alert Service Bulletin 737–53A1188, Revision 3, dated September 6, 2013; except as provided by paragraph (j)(3) of this AD. Repeat the inspections at intervals not to exceed 4,500 flight cycles, until accomplishment of the repair/preventive change in accordance with Boeing Alert Service Bulletin 737–53A1188, Revision 2, dated May 9, 2007; or Boeing Alert Service Bulletin 737–53A1188, Revision 3, dated September 6, 2013; which terminates the repetitive inspection requirements for the airplanes identified in this paragraph. A repair/preventive change done using Boeing Alert Service Bulletin 737–53A1188, dated April 9, 1998; or Boeing Alert Service Bulletin 737–53A1188, Revision 1, dated March 18, 1999; does not terminate the repetitive inspections, but the repetitive inspections may be terminated after the existing kit is replaced with a new kit in accordance with paragraph 3.B., Part II, step 3, or Part III, step 3, of Boeing Alert Service Bulletin 737–53A1188, Revision 2, dated May 9, 2007. As of the effective date of this AD, only Boeing Alert Service Bulletin 737–53A1188, Revision 3, dated September 6, 2013, may be used to do the actions required by this paragraph.

Note 1 to paragraph (g) of this AD: Airplanes identified as Group 1 in Boeing Alert Service Bulletin 737–53A1188, Revision 3, dated September 6, 2013, are the same as those identified in Boeing Alert Service Bulletin 737–53A1188, Revision 2, dated May 9, 2007.

(h) Retained Repetitive Inspections: Boeing Alert Service Bulletin 737–53A1197, Dated August 25, 2006

This paragraph restates the requirements of paragraph (g) of AD 2008–17–03, Amendment 39–15641 (73 FR 48288, August 19, 2008). For airplanes identified in Boeing Alert Service Bulletin 737–53A1197, dated August 25, 2006: Do an ultrasound inspection of the slot-shaped cutout in the web for the door stop strap at stringer 16L, an HFEC inspection of the web along the upper and lower edges of the doubler around the doorstop strap at stringer 16L, and a detailed inspection of the web around the doubler for the cutout at stringer 16L, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1197, dated August 25, 2006. Do the inspections at the applicable time specified in paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 737–53A1197, dated August 25, 2006, except as provided by paragraph (j)(2) of this AD. Do all applicable corrective actions before further flight in accordance with Boeing Alert Service Bulletin 737–53A1197, dated August 25, 2006, except as provided by paragraph (j)(3) of this AD. Repeat the inspections at intervals not to exceed 4,500 flight cycles, until accomplishment of the repair/preventive change in accordance with Boeing Alert Service Bulletin 737–53A1197, dated August 25, 2006, which terminates the repetitive inspections.

(i) New Repetitive Inspections: Group 2 Airplanes, Boeing Alert Service Bulletin 737–53A1188, Revision 3, Dated September 6, 2013

For airplanes identified as Group 2 in Boeing Alert Service Bulletin 737–53A1188, Revision 3, dated September 6, 2013: At the applicable times specified in Table 3 of paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 737–53A1188, Revision 3, dated September 6, 2013, except as required by paragraph (j)(1) of this AD: Do detailed and HFEC inspections for cracking in the web of the body station 303.9 frame at stringer 15L, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1188, Revision 3, dated September 6, 2013, except as required by paragraph (j)(3) of this AD. Do all applicable corrective actions before further flight. Repeat the inspection thereafter at the applicable time specified in Table 3 of paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 737–53A1188, Revision 3, dated September 6, 2013. Accomplishment of a repair using a method approved in accordance with the procedures specified in paragraph (k) of this AD terminates the repetitive inspections required by this paragraph for the area covered by the repair.

(j) Exceptions to Service Information Specifications

(1) Where Boeing Alert Service Bulletin 737–53A1188, Revision 3, dated September 6, 2013, specifies a compliance time “after the Revision 3 date of this service bulletin,” this AD requires compliance within the

specified time after the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 737-53A1197, dated August 25, 2006, specifies a compliance time "After the Date of this Service Bulletin," this AD requires compliance for paragraph (h) of this AD within the specified time after September 23, 2008 (the effective date of AD 2008-17-03, Amendment 39-15641 (73 FR 48288, August 19, 2008)). For the initial inspection, the grace period for airplanes that have exceeded the specified threshold is extended to 4,500 flight cycles after September 23, 2008 (the effective date of AD 2008-17-03).

(3) Where Boeing Alert Service Bulletin 737-53A1188, Revision 2, dated May 9, 2007; Boeing Alert Service Bulletin 737-53A1188, Revision 3, dated September 6, 2013; and Boeing Alert Service Bulletin 737-53A1197, dated August 25, 2006; specify to contact Boeing for appropriate action, including repair of damage outside the scope of the service information, repair using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(k) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved for AD 2008-17-03, Amendment 39-15641 (73 FR 48288, August 19, 2008), are approved as AMOCs for the corresponding provisions of this AD.

(l) Related Information

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6450; fax: 425-917-6590; email: alan.pohl@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, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680;

Internet <https://www.myboeingfleet.com>. You may view the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on April 4, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014-08301 Filed 4-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2014-0226; Directorate Identifier 2014-CE-009-AD]

RIN 2120-AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Diamond Aircraft Industries GmbH Models DA40 and DA40F airplanes that would supersede AD 2013-24-14, which resulted from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the fatigue strength found in the aft main spar not ensuring unlimited lifetime structural integrity. We are issuing this proposed AD to require actions to address the unsafe condition on these products and to change the compliance time to coincide with other regulatory requirements.

DATES: We must receive comments on this proposed AD by May 29, 2014.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** (202) 493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-

30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Str.5, A-2700 Wiener Neustadt, Austria; telephone: +43 2622 26700; fax: +43 2622 26780; email: office@diamond-air.at; Internet: <http://www.diamondaircraft.com/contact/technical.php>. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2014-0226; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

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-2014-0226; Directorate Identifier 2014-CE-009-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 November 22, 2013, we issued AD 2013–24–14, Amendment 39–17689 (78 FR 72568; December 3, 2013). That AD required actions intended to address an unsafe condition on Diamond Aircraft Industries GmbH Models DA40 and DA40F airplanes and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country.

The inspections required by AD 2013–24–13 are tied to calendar time and the Major Structural Inspection (MSI) identified in Chapter 5 of the airplane maintenance manual (AMM). This compliance time mirrors the mandatory continuing airworthiness information (MCAI) issued by the State of Design for these products.

However, U.S. operators are not required to comply with the requirement to inspect before the next MSI since the Limitations in Chapter 4 of the AMM are mandatory and the MSI in Chapter 5 of the AMM is not mandatory.

Relevant Service Information

Diamond Aircraft Industries GmbH has issued Mandatory Service Bulletin MSB 40–074, MSB D4–094, and MSB F4–028 (co-published as a single document), dated May 10, 2013; Diamond Aircraft Industries GmbH Work Instructions WI–MSB 40–074, WI–MSB D4–094, and WI–MSB F4–028, (co-published as a single document), dated May 10, 2013; and DA 40 Series AMM, Chapter Section 05–28–50, Section 2 (Cockpit), page 11, Item 31, sub-item “The rear main bulkhead,” Rev. 7, dated April 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 the Proposed AD

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

Costs of Compliance

We estimate that this proposed AD will affect 747 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to

comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Required parts would cost about \$100 per product.

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This proposed 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 removing Amendment 39–17689 (78 FR 72568; December 3, 2013), and adding the following new AD:

Diamond Aircraft Industries GmbH: Docket No. FAA–2014–0226; Directorate Identifier 2014–CE–009–AD.

(a) Comments Due Date

We must receive comments by May 29, 2014.

(b) Affected ADs

This AD supersedes AD 2013–24–14, Amendment 39–17689 (78 FR 72568; December 3, 2013).

(c) Applicability

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

(d) Subject

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

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this proposed AD to correct an incorrect compliance time and to modify the aft main spar in the cabin area to ensure the structural integrity of the airplane.

(f) Actions and Compliance

Comply with this AD within the compliance times specified in paragraphs (f)(1) through (f)(4) of this AD, unless already done.

- (1) *For airplanes with less than 1,500 hours TIS:* At or before 2,000 hours time-in-service (TIS) after the effective date of this AD or within the next 114 months after the effective date of this AD, whichever occurs first, modify the aft main spar in the cabin area following the INSTRUCTIONS section of Diamond Aircraft Industries GmbH Work Instructions WI–MSB 40–074, WI–MSB D4–094, and WI–MSB F4–028 (co-published as a single document), dated May 10, 2013, as specified in Diamond Aircraft Industries GmbH Mandatory Service Bulletins (MSB) 40–074, D4–094, and F4–028 (co-published as a single document), dated May 10, 2013.
- (2) *For airplanes with 1,500 hours or more than 1,500 hours TIS but less than 2,000 hours TIS:* At or before 500 hours TIS after

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

(3) *For airplanes with 2,000 hours or more than 2,000 hours TIS but less than 2,500 hours TIS:* At or before 500 hours TIS after the effective date of this AD or within the next 48 months after the effective date of this AD, whichever occurs first, modify the aft main spar in the cabin area following the INSTRUCTIONS section of Diamond Aircraft Industries GmbH Work Instructions WI-MSB 40-074, WI-MSB D4-094, and WI-MSB F4-028 (co-published as a single document), dated May 10, 2013, as specified in Diamond Aircraft Industries GmbH Mandatory Service Bulletins (MSB) 40-074, D4-094, and F4-028 (co-published as a single document), dated May 10, 2013.

(4) *For airplanes with 2,500 hours or more than 2,500 hours TIS:* Within the next 100 hours TIS after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first, inspect the aft spar center section following DIAMOND AIRCRAFT INDUSTRIES DA 40 SERIES AIRPLANE MAINTENANCE MANUAL (AMM), Chapter Section 05-28-50, Section 2 (Cockpit), Item 31, sub-item "The rear main bulkhead," page 11, Rev. 7, dated April 1, 2013, and perform any applicable corrective actions.

(i) After doing the inspection required by paragraph (f)(4) of this AD including any applicable corrective actions, at or before 500 hours TIS after the effective date of this AD or within the next 48 months after the effective date of this AD, whichever occurs first, modify the aft main spar in the cabin area following the INSTRUCTIONS section of Diamond Aircraft Industries GmbH Work Instructions WI-MSB 40-074, WI-MSB D4-094, and WI-MSB F4-028 (co-published as a single document), dated May 10, 2013, as specified in Diamond Aircraft Industries GmbH Mandatory Service Bulletins (MSB) 40-074, D4-094, and F4-028 (co-published as a single document), dated May 10, 2013.

(ii) The modification required in paragraph (f)(4)(i) of this AD may be done instead of the inspection required by paragraph (f)(4) of this AD provided it is done within the next 100 hours TIS after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer,

FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4144; fax: (816) 329-4090; email: mike.kiesov@faa.gov. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2013-0145, dated July 15, 2013, for related information. You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2014-0226. For service information related to this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Str.5, A-2700 Wiener Neustadt, Austria; telephone: +43 2622 26700; fax: +43 2622 26780; email: office@diamond-air.at; Internet: <http://www.diamondaircraft.com/contact/technical.php>. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

Issued in Kansas City, Missouri, on April 8, 2014.

Timothy Smyth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014-08312 Filed 4-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2014-0196; Directorate Identifier 2014-NM-015-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier, Inc. 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 Bombardier, Inc. Model CL-600-2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL-600-2D15 (Regional Jet Series 705) airplanes, Model CL-600-2D24 (Regional Jet Series 900) airplanes, and Model CL-

600-2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by two in-service reports of fracture of the rudder pedal tubes installed on the pilot-side rudder bar assembly. This proposed AD would require repetitive inspections for cracking and damage of the pilot-side rudder pedal tubes, and corrective action if necessary. This proposed AD would also provide optional terminating action for the repetitive inspections. We are proposing this AD to detect and correct cracked and damaged pilot-side rudder pedal tubes, which could result in loss of function of the pilot's rudder pedal during flight, takeoff, or landing, and could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by May 29, 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 Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401; email thd.crj@aero.bombardier.com; Internet <http://www.bombardier.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> by searching for and locating Docket No. FAA-2014-0196; 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 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:

Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE-171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7318; fax (516) 794-5531.

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-2014-0196; Directorate Identifier 2014-NM-015-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

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has issued Canadian Airworthiness Directive CF-2014-02, dated January 8, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model CL-600-2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL-600-2D15 (Regional Jet Series 705) airplanes, Model CL-600-2D24 (Regional Jet Series 900) airplanes, and Model CL-600-2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

There have been two in-service reports of fracture of the rudder pedal tubes installed on the pilot-side rudder bar assembly on CL-600-2B19 model aeroplanes.

Laboratory examination of the fractured rudder pedal tubes found that in both cases, the fatigue cracks initiated at the aft taper pin holes where the connecting rod fitting is attached. Fatigue testing of the rudder pedal tubes confirmed that the fatigue cracking is due to loads induced during parking brake application. Therefore, only the rudder pedal tubes on the pilot's side are vulnerable to fatigue cracking as the parking brake is primarily applied by the pilot.

Loss of pilot rudder pedal input during flight would result in reduced yaw controllability of the aeroplane. Loss of pilot

rudder pedal input during takeoff or landing may lead to a runway excursion.

Although there have been no reported failures to date on any CL-600-2C10, -2D15, -2D24, and -2D25 model aeroplanes, the same torque tubes part number (P/N) 600-90204-3 are installed, which may be prone to premature fatigue cracking.

This [Canadian] AD mandates initial and repetitive [detailed and eddy current] inspections [for cracking and damage] of the pilot-side rudder pedal tubes, P/N 600-90204-3, until the terminating action [replacement of both pilot-side rudder bar assemblies] is accomplished [and corrective actions if necessary].

Corrective actions include replacement of the rudder bar assembly and repair. You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2014-0196.

Relevant Service Information

Bombardier has issued Service Bulletin 670BA-27-065, dated November 15, 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.

Repair Approvals

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 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 the DAH repair approval statements 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, certain requirements of 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 a DAH authorized to approve certain required repairs for this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 400 airplanes of U.S. registry.

We also estimate that it would take about 3 work-hours per product to comply with the basic inspection requirements of this proposed AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be \$102,000, or \$255 per airplane, per inspection cycle.

In addition, we estimate that any necessary replacement of the rudder pedal tubes would take about 6 work-hours and require parts costing \$2,850, for a cost of \$3,360 per product. We have no way of determining the number of aircraft that might need this action.

We have received no definitive data that would enable us to provide cost estimates for the on-condition repairs 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. Amend § 39.13 by adding the following new airworthiness directive (AD):

Bombardier, Inc.: Docket No. FAA–2014–0196; Directorate Identifier 2014–NM–015–AD.

(a) Comments Due Date

We must receive comments by May 29, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10002 through 10342 inclusive.

(2) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705), and Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15337 inclusive.

(3) Bombardier, Inc. Model CL–600–2E25 (Regional Jet Series 1000) airplanes, serial numbers 19001 through 19040 inclusive.

(d) Subject

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

(e) Reason

This AD was prompted by two in-service reports of fracture of the rudder pedal tubes installed on the pilot-side rudder bar assembly. We are issuing this AD to detect and correct cracked and damaged pilot-side rudder pedal tubes, which could result in loss of function of the pilot’s rudder pedal during flight, takeoff, or landing, and could result in reduced controllability of the airplane.

(f) Compliance

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

(g) Repetitive Inspections

Before the accumulation of 26,000 total flight cycles or within 3 months after the effective date of this AD, whichever occurs later: Perform a detailed or eddy current inspection for cracking around the aft tapered holes of both pilot-side rudder pedal tubes and for damage of the rudder pedal tubes in locations other than around the aft tapered holes, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–065, dated November 15, 2013. Repeat the inspection thereafter at the applicable intervals specified in paragraph (g)(1) or (g)(2) of this AD, until the terminating action specified in paragraph (i) of this AD is done.

(1) If the most recent inspection was a detailed inspection: Within 750 flight cycles after doing the detailed inspection.

(2) If the most recent inspection was an eddy current inspection: Within 1,250 flight cycles after doing the eddy current inspection.

(h) Corrective Actions

(1) If any crack is found around the aft tapered holes during any inspection required by paragraph (g) of this AD, before further flight, replace the rudder bar assembly, in accordance with Part B of the Accomplishment Instructions of Bombardier

Service Bulletin 670BA–27–065, dated November 15, 2013.

(2) If any damage is found during any inspection required by paragraph (g) of this AD in a location other than around the aft tapered holes: Before further flight, repair using a method approved by the Manager, New York ACO; or TCCA (or its delegated agent, or the Design Approval Holder (DAH) with TCCA design organization approval, as applicable). For a repair method to be approved, the repair approval must specifically refer to this AD.

(i) Optional Terminating Action

Replacement of both pilot-side rudder bar assemblies, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–065, dated November 15, 2013, constitutes terminating action for the repetitive inspections required by paragraph (g) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. 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, as applicable). 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 (MCAI) Canadian Airworthiness Directive CF–2014–02, dated January 8, 2014, 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 Docket No. FAA–2014–0196.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email thd.crj@aero.bombardier.com; Internet <http://www.bombardier.com>. 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.

Issued in Renton, Washington, on April 4, 2014.

Jeffrey E. Duven,

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

[FR Doc. 2014-08304 Filed 4-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2014-0241; Directorate Identifier 2014-CE-008-AD]

RIN 2120-AA64

Airworthiness Directives; British Aerospace Regional Aircraft Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all British Aerospace Regional Aircraft Jetstream Model 3201 airplanes that would supersede AD 2007-10-16. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the need to incorporate revisions to the Airworthiness Limitations section of the Instructions for Continued Airworthiness. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by May 29, 2014.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
 - *Fax:* (202) 493-2251.
 - *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
 - *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- For service information identified in this proposed AD, contact BAE Systems

(Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone: +44 1292 675207; fax: +44 1292 675704; email: RApublications@baesystems.com; Internet: <http://www.baesystems.com/Businesses/RegionalAircraft/>. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2014-0241; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4138; fax: (816) 329-4090; email: taylor.martin@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2014-0241; Directorate Identifier 2014-CE-008-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 9, 2007, we issued AD 2007-10-16, Amendment 39-15057 (72 FR

27953, May 18, 2007). That AD required actions intended to address an unsafe condition on all British Aerospace Regional Aircraft Jetstream Model 3201 airplanes and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country.

Since we issued AD 2007-10-16, Amendment 39-15057 (72 FR 27953, May 18, 2007), BAE Systems (Operations) Ltd amended Jetstream Series 3200 Aircraft Maintenance Manual (AMM) Chapter 05-10-05, Airworthiness Limitations. Some life limits have been amended and new life limits introduced.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2014-0044, dated February 24, 2014 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

The Jetstream Series 3200 Aircraft Maintenance Manual (AMM), includes Chapter 05-10-05 "Airworthiness Limitations, Description and Operation". The maintenance tasks and limitations contained in this chapter have been identified as mandatory actions for continued airworthiness and EASA issued AD 2007-0074 to require operators to comply with those instructions.

Since that AD was issued, BAE Systems (Operations) Ltd amended Jetstream Series 3200 AMM Chapter 05-10-05 to introduce life limitations for the main landing gear radius rod mounting shaft assemblies and to incorporate wing structure inspections previously introduced through BAE Systems (Operations) Ltd Service Bulletin (SB) SB 51-JA020940. In addition, a new table was introduced to provide extended fatigue life limitations for structural items for aeroplanes entered into a life extension programme. Reference to BAE Systems (Operations) Ltd SB 32-JA981042 was updated from Revision 7 to Revision 8 to reflect increased life limits of the nose landing gear.

Failure to comply with the new and more restrictive instructions could result in an unsafe condition.

For the reasons described above, this EASA AD retains the requirements of EASA AD 2007-0074, which is superseded, and requires implementation of the maintenance requirements and/or airworthiness limitations as specified in Chapter 05-10-05 of the Jetstream Series 3200 AMM at Revision 29.

You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2014-0241.

Relevant Service Information

BAE Systems (Operations) Ltd has issued British Aerospace Jetstream 3200 Series Aircraft Maintenance Manual, Revision 29, dated December 15, 2012.

The actions described in this AMM are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Costs of Compliance

We estimate that this proposed AD will affect 14 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD of inserting the document into the Airworthiness Limitations section of the Instructions for Continued Airworthiness. The average labor rate is \$85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$1,190, or \$85 per product.

We have no way of determining the cost to replace the life limited parts and to do the applicable maintenance tasks on each airplane.

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 proposed 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 removing Amendment 39–15057 (72 FR 27953, May 18, 2007), and adding the following new AD:

British Aerospace Regional Aircraft: Docket No. FAA–2014–0241; Directorate Identifier 2014–CE–008–AD.

(a) Comments Due Date

We must receive comments by May 29, 2014.

(b) Affected ADs

This AD supersedes AD 2007–10–16, Amendment 39–15057 (72 FR 27953, May 18, 2007).

(c) Applicability

This AD applies to British Aerospace Regional Aircraft Jetstream Model 3201 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 5: Time Limits.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the need to incorporate revisions to the Airworthiness Limitations section of the Instructions for Continued Airworthiness (ICA). We are issuing this AD to enforce compliance with these requirements in order to maintain airworthiness.

(f) Actions and Compliance

Unless already done, do the actions in paragraphs (f)(1) and (f)(2) of this AD:

(1) As of the effective date of this AD, replace each component before exceeding the applicable life limit and complete all applicable maintenance tasks within the thresholds and intervals as specified in British Aerospace Jetstream 3200 Series Aircraft Maintenance Manual, Revision 29, Airworthiness Limitations, Chapter 05–10–05, dated December 15, 2012.

(2) You may comply with the requirement of paragraph (f)(1) of this AD by incorporating British Aerospace Jetstream 3200 Series Aircraft Maintenance Manual, Revision 29, Airworthiness Limitations, Chapter 05–10–05, dated December 15, 2012, into the Airworthiness Limitations section of your ICA and complying with that program.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090; email: taylor.martin@faa.gov. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2014–0044, dated February 24, 2014. You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2014–0241. For service information related to this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone: +44 1292 675207; fax: +44 1292 675704; email:

RApublications@baesystems.com; Internet: <http://www.baesystems.com/Businesses/RegionalAircraft/>. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

Issued in Kansas City, Missouri, on April 7, 2014.

Timothy Smyth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014-08318 Filed 4-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2014-0194; Directorate Identifier 2014-NM-022-AD]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 737-600, -700, -700C, -800, -900, and -900ER series airplanes. This proposed AD was prompted by reports of latently failed fuel shutoff valves discovered during fuel filter replacement. This proposed AD would require revising the maintenance or inspection program to include new airworthiness limitations. We are proposing this AD to detect and correct latent failures of the fuel shutoff valve to the engine, which could result in the inability to shut off fuel to the engine and, in case of certain engine fires, an uncontrollable fire that could lead to wing failure.

DATES: We must receive comments on this proposed AD by May 29, 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.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2014-0194; 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:

Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: (425) 917-6509; fax: (425) 917-6590; email: rebel.nichols@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2014-0194; Directorate Identifier 2014-NM-022-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 have received reports of latently failed fuel shutoff valves discovered during fuel filter replacement. Deficiencies in the valve actuator design have resulted in latent failures of the fuel shutoff valve to the engine. This condition, if not detected and corrected, could result in latent failures of the fuel shutoff valve to the engine, which could result in the inability to shut off fuel to the engine and, in case of certain engine fires, an uncontrollable fire that could lead to wing failure.

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.

Proposed AD Requirements

This proposed AD would require revising the maintenance or inspection program to include new airworthiness limitations. The airworthiness limitations would allow an operator to perform the operational check as either a maintenance action or a flightcrew action. The flightcrew or maintenance crew would monitor the engine spar valve lights for a few seconds immediately after moving the engine fuel condition levers. Flightcrews can perform this operational check while starting the engine or while shutting down the engine. Maintenance crews can do this operational check as a separate action that does not require actual starting of the engine.

This proposed AD would require revisions to certain operator maintenance documents to include these new inspections. Compliance with these inspections is required by section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, an operator might not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval of an alternative method of compliance (AMOC) in accordance with the provisions of paragraph (i) of this proposed AD. The request should include a description of changes to the proposed inspections that will ensure the continued operational safety of the airplane.

Interim Action

We consider this proposed AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this proposed AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this proposed AD affects 1,244 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
Incorporating Airworthiness Limitation.	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$105,740

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 proposed 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–2014–0194; Directorate Identifier 2014–NM–022–AD.

(a) Comments Due Date

We must receive comments by May 29, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2823, Fuel Selector/Shut-off Valve.

(e) Unsafe Condition

This AD was prompted by reports of latently failed fuel shutoff valves discovered during fuel filter replacement. We are issuing this AD to detect and correct latent failures of the fuel shutoff valve to the engine, which could result in the inability to shut off fuel to the engine and, in case of certain engine fires, an uncontrollable fire that could lead to wing failure.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to add airworthiness limitation number 28–AWL–MOV, by incorporating the information specified in Figure 1 to paragraph (g) of this AD into the Airworthiness Limitations Section of the Instructions for Continued Airworthiness. The initial compliance time for accomplishing the actions specified in 28–AWL–MOV is within 7 days after accomplishing the maintenance or inspection program revision required by this paragraph.

FIGURE 1 TO PARAGRAPH (G) OF THIS AD: ENGINE SHUT-OFF VALVE (FUEL SPAR VALVE) POSITION INDICATION OPERATIONAL CHECK

AWL Number	Task	Interval	Applicability	Description
28–AWL–MOV	ALI	DAILY	737–600, –700, –700C, –800, –900, and –900ER series airplanes.	Engine Shut-Off Valve (Fuel Spar Valve) Position Indication Operational Check. Concern: The MOV actuator design can result in airplanes operating with a failed MOV actuator that is not reported. A latently failed MOV actuator could prevent fuel shut off to an engine. In the event of certain engine fires, the potential exists for an engine fire to be uncontrollable. Perform one of the following operational checks of the Fuel Spar Valve position indication (unless checked by the flight crew in a manner approved by the principal operations inspector): A. Operational Check during engine shutdown:

FIGURE 1 TO PARAGRAPH (G) OF THIS AD: ENGINE SHUT-OFF VALVE (FUEL SPAR VALVE) POSITION INDICATION OPERATIONAL CHECK—Continued

AWL Number	Task	Interval	Applicability	Description
				<p>1. Do all operational checks of the left engine fuel spar valve actuator.</p> <p>a. As the ENG 1 START LEVER on the CONTROL STAND is moved to the CUTOFF position, verify the SPAR VALVE CLOSED indication light on the OVERHEAD PANEL for No.1 Engine changes from OFF to BRIGHT then DIM.</p> <p>b. If the test fails, (bright light fails to illuminate), before further flight, repair faults as required (refer to Boeing airplane maintenance manual (AMM) 28–22–11).</p> <p>2. Do an operational check of the right engine fuel spar valve actuator.</p> <p>a. As the ENG 2 START LEVER on the CONTROL STAND is moved to the CUTOFF position, verify the SPAR VALVE CLOSED indication light on the OVERHEAD PANEL for No. 2 Engine changes from OFF to BRIGHT then DIM.</p> <p>b. If the test fails, (bright light fails to illuminate), before further flight, repair faults as required (refer to Boeing AMM 28–22–11).</p> <p>B. Operational check during engine start.</p> <p>1. Do an operational check of the left engine fuel spar valve actuator.</p> <p>a. As the ENG 1 START LEVER on the CONTROL STAND is moved to the IDLE position, verify the SPAR VALVE CLOSED indication light on the OVERHEAD PANEL for No. 1 Engine changes from DIM to BRIGHT then OFF.</p> <p>b. If the test fails, (bright light fails to illuminate), before further flight, repair faults as required (refer to Boeing AMM 28–22–11).</p> <p>2. Do an operational check of the right engine fuel spar valve actuator.</p> <p>a. As the ENG 2 START LEVER on the CONTROL STAND is moved to the IDLE position, verify the SPAR VALVE CLOSED indication light on the OVERHEAD PANEL for No. 2 Engine changes from DIM to BRIGHT then OFF.</p> <p>b. If the test fails, (bright light fails to illuminate), before further flight, repair faults as required (refer to Boeing AMM 28–22–11).</p> <p>C. Operational check without engine operation.</p> <p>1. Make sure No. 1 and No. 2 Engine FIRE switches on the Aft Electronic Panel are in the NORMAL (IN) position.</p> <p>2. Make sure No. 1 and No. 2 Engine Start Switches on the Forward Overhead Panel, are in the OFF or AUTO position.</p> <p>3. Do an operational check of the left engine fuel spar valve actuator.</p> <p>a. Move ENG 1 START LEVER on the CONTROL STAND to the IDLE position and wait 10 seconds.</p> <p>NOTE: It is normal under this test condition for the ENG VALVE CLOSED indication light on the OVERHEAD PANEL to transition from DIM to BRIGHT and stay BRIGHT.</p> <p>b. Move ENG 1 START LEVER on the CONTROL STAND to the CUTOFF position.</p> <p>c. Verify the SPAR VALVE CLOSED indication light on the OVERHEAD PANEL for No. 1 Engine changes from OFF to BRIGHT then DIM.</p> <p>d. If the test fails, (bright light fails to illuminate), before further flight, repair faults as required (refer to Boeing AMM 28–22–11).</p> <p>4. Do an operational check of the right engine fuel spar valve actuator.</p> <p>a. Move ENG 2 START LEVER on the CONTROL STAND to the IDLE position and wait 10 seconds.</p>

FIGURE 1 TO PARAGRAPH (G) OF THIS AD: ENGINE SHUT-OFF VALVE (FUEL SPAR VALVE) POSITION INDICATION OPERATIONAL CHECK—Continued

AWL Number	Task	Interval	Applicability	Description
				<p>NOTE: It is normal under this test condition for the ENG VALVE CLOSED indication light on the OVERHEAD PANEL to transition from DIM to BRIGHT and stay BRIGHT.</p> <p>b. Move ENG 2 START LEVER on the CONTROL STAND to the CUTOFF position.</p> <p>c. Verify the SPAR VALVE CLOSED indication light on the OVERHEAD PANEL for No. 2 Engine changes from OFF to BRIGHT then DIM.</p> <p>d. If the test fails, (bright light fails to illuminate), before further flight, repair faults as required (refer to Boeing AMM 28–22–11).</p>

(h) No Alternative Actions and Intervals

After accomplishment of the maintenance or inspection program revision required by paragraph (g) 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 (i)(1) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO) FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) 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.

(j) Related Information

For more information about this AD, contact Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: (425) 917-6509; fax: (425) 917-6590; email: rebel.nichols@faa.gov.

Issued in Renton, Washington, on April 4, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014-08320 Filed 4-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2014-0230; Directorate Identifier 2013-NM-242-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus 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 Airbus Model A300-600 series airplanes. This proposed AD was prompted by reports of cracking found in the pylon box, which was due to the stresses resulting from the pressure applied by the engines' thrust reverser cowl bumpers. This proposed AD would require repetitive high frequency eddy current (HFEC) inspections for cracking, and replacement of all fittings if necessary. Replacement of all fittings would terminate the repetitive HFEC inspections. We are proposing this AD to detect and correct cracks of the pylon rib 5, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by May 29, 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 Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>. 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> by searching for and locating Docket No. FAA-2014-0230; 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 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: Dan Rodina, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-2125; 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–2014–0230; Directorate Identifier 2013–NM–242–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 2013–0286, dated December 4, 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 the lower side of rib 5 in the pylon box on A300 aeroplanes powered with General Electric engines.

Investigations revealed that these cracks were due to the stresses resulting from the pressure applied by the thrust reverser cowl bumpers.

This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.

Airbus developed an inspection programme to detect the cracks and associated actions to correct them.

For the reasons described above, this [EASA] AD requires repetitive [HFEC] inspections of the pylon rib 5 on the left hand side (LH) and right hand (RH) side and, when cracks are detected, replacement of the affected structural part(s) [Replacement of all fittings would terminate the repetitive HFEC inspections.]

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–2014–0230.

Relevant Service Information

Airbus has issued the following service bulletins. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

- Airbus Service Bulletin A300–54–6031, dated May 30, 1996.
- Airbus Mandatory Service Bulletin A300–54–6034, Revision 02, dated August 26, 2013.

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.

Differences Between This Proposed AD and the MCAI or Service Information

While paragraph (2) of EASA AD 2013–0286, dated December 4, 2013, gives a compliance time of within 250 flight hours to replace fittings, this AD requires replacement of those fitting before further flight.

Costs of Compliance

We estimate that this proposed AD affects 129 airplanes of U.S. registry.

We also estimate that it would take about 9 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Required parts would cost \$0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be \$98,685 or \$765 per product.

In addition, we estimate that any necessary follow-on actions would take about 32 work-hours and require parts costing \$2,450, for a cost of \$5,170 per product. We have no way of determining the number of aircraft that might need this action.

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. Amend § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2014–0230; Directorate Identifier 2013–NM–242–AD.

(a) Comments Due Date

We must receive comments by May 29, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes, certificated in any category, all manufacturer serial numbers, except those on which Airbus Modification 11110 has been embodied in production, or that have been modified in service as specified in Airbus Service Bulletin A300–54–6031, dated May 30, 1996.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/Pylons.

(e) Reason

This AD was prompted by reports of cracking found in the pylon box, which was due to the stresses resulting from the pressure applied by the thrust reverser cowl bumpers. We are issuing this AD to detect and correct cracks of the pylon rib 5, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Inspection and Replacement

(1) Before the accumulation of 15,000 total flight hours since the airplane's first flight, or within 6,000 flight hours after the effective date of this AD, whichever occurs later, do a high frequency eddy current (HFEC) inspection for cracking on the lower area of rib 5 on the left-hand and right-hand side pylons, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300-54-6034, Revision 02, dated August 26, 2013. Repeat the inspection thereafter at intervals not to exceed 15,000 flight hours.

(2) If any crack is found during any inspection required by paragraph (g)(1) of this AD, before further flight, replace all the fittings with new standard fittings, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300-54-6031, dated May 30, 1996.

(h) Terminating Action

Replacement of all fittings as required by paragraph (g)(2) of this AD, or modification of pylons in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300-54-6031, dated May 30, 1996, terminates the repetitive HFEC inspections required by paragraph (g)(1) of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for the inspections required by paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A300-54-6034, Revision 01, dated September 14, 1999, which is not incorporated by reference in this AD.

(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: Dan Rodina, Aerospace Engineer, International Branch, ANM-116, Transport

Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-2125; 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). 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 (MCAI) European Aviation Safety Agency Airworthiness Directive 2013-0286, dated December 4, 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-2014-0230.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>. 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.

Issued in Renton, Washington, on April 1, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014-08303 Filed 4-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2014-0228 Directorate Identifier 2013-NM-216-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all

Airbus Model A330-200 Freighter, A330-200 and -300, and A340-200, -300, -500, and -600 series airplanes. This proposed AD was prompted by reassessment of an unsafe condition related to MZ-type spoiler servo-controls (SSCs) that did not remain locked in the retracted position (hydraulic locking function) after manual depressurization of the corresponding hydraulic circuit. This reassessment resulted in the determination that performing repetitive operational tests of all SSC types is necessary. This proposed AD would require repetitive operational tests of the hydraulic locking function on each SSC installed on the blue or yellow hydraulic circuits, and replacing any affected SSC with a serviceable SSC. We are proposing this AD to detect and correct loss of the hydraulic locking function during take-off, which, in combination with one inoperative engine, could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by May 29, 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 Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email airworthiness.A330-A340@airbus.com; Internet <http://www.airbus.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 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:

Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-1138; 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-2014-0228; Directorate Identifier 2013-NM-216-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 2013-0251 dated October 15, 2013; Correction dated October 16, 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 post-flight maintenance checks accomplished on an A330 and on an A340 airplane, it was identified that seven spoiler servo-controls MZ series had lost their hydraulic locking function. The results of the subsequent technical investigation accomplished in-shop by the part supplier confirmed the system failure was due to a sheared seal on the blocking valve, ensuring the blocking function of the spoiler. It is suspected that the seal damage may have occurred during accomplishment of a modification to fit a new design of maintenance cover on wing, required by EASA AD 2008-0160 [(http://ad.easa.europa.eu/blob/easa_ad_2008_0160.pdf)], [which

corresponds to FAA AD 2009-18-20, Amendment 39-16017 (74 FR 46313, September 9, 2009)].

This condition, if not detected and corrected, in combination with one engine inoperative at take-off, could result in reduced control of the aeroplane.

Prompted by these findings, Airbus issued All Operators Telex (AOT) A330-27A3185 and AOT A340-27A4181 to request a one-time operational test of the Hydraulic Locking Function for aeroplanes on which MZ type Spoiler Servo Control (SSC) Part Number (P/N) MZ4339390-12 or P/N MZ4306000-12 are fitted, and EASA issued AD 2012-0009 (http://ad.easa.europa.eu/blob/easa_ad_2012_0009.pdf) [which corresponds to FAA AD 2012-25-10, Amendment 39-17291 (77 FR 62228, December 27, 2012)] to require accomplishment of this test.

Since that [EASA] AD was issued, Airbus re-assessed the situation and determined that it is necessary to introduce repetitive inspections [operational tests] of the SSC, irrespective of SSC type. Airbus issued three SBs for those repetitive inspections [operational tests] on all A330, A340, and A340-500/600 aeroplanes.

For the reason described above, this [EASA] AD requires repetitive operational tests of the hydraulic locking function of the SSC installed on the Blue and Yellow hydraulic circuits, irrespective of the SSC type, and, depending on test results, replacement of the SSC.

This [EASA] AD has been republished to correct the date of publication.

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-2014-0228.

Relevant Service Information

Airbus has issued the following service information. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

- Airbus Mandatory Service Bulletin A330-27-3195, dated December 7, 2012.
- Airbus Mandatory Service Bulletin A340-27-4188, dated December 7, 2012.
- Airbus Mandatory Service Bulletin A340-27-5059, dated April 10, 2013.

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.

Costs of Compliance

We estimate that this proposed AD affects about 77 airplanes of U.S. registry.

We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$39,270, or \$510 per product.

We estimate that it would take about 3 work-hours per product to do any necessary SSC replacement that would be required based on the results of the proposed operational test. Required parts would cost about \$35,000 per SSC. We have no way of determining the number of aircraft that might need these replacements.

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 proposed 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):

Airbus: Docket No. FAA–2014–0228; Directorate Identifier 2013–NM–216–AD.

(a) Comments Due Date

We must receive comments by May 29, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, 303, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, –213, –311, –312, and –313 airplanes; and Model A340–541 and –642 airplanes, certificated in any category; all manufacturer serial numbers (MSN).

(d) Subject

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

(e) Reason

This AD was prompted by reassessment of an unsafe condition related to MZ-type spoiler servo-controls (SSCs) that did not remain locked in the retracted position (hydraulic locking function) after manual depressurization of the corresponding hydraulic circuit. This reassessment resulted in the determination that performing repetitive operational tests of all SSC types is necessary. We are issuing this AD to detect and correct loss of the hydraulic locking function during take-off, which, in combination with one inoperative engine, could result in reduced controllability of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the

compliance times specified, unless the actions have already been done.

(g) Repetitive Operational Tests

(1) At the time specified in paragraph (g)(2) of this AD: Accomplish an operational test of the hydraulic locking function on each SSC (any type), when fitted on the Blue or Yellow hydraulic circuits, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g)(1)(i), (g)(1)(ii) or (g)(1)(iii) of this AD. Repeat the operational test thereafter at intervals not to exceed 48 months.

(i) Airbus Mandatory Service Bulletin A330–27–3195, dated December 7, 2012 (for Model A330–200 Freighter, A330–200 and –300 series airplanes).

(ii) Airbus Mandatory Service Bulletin A340–27–4188, dated December 7, 2012 (for Model A340–200, and –300 series airplanes).

(iii) Airbus Mandatory Service Bulletin A340–27–5059, dated April 10, 2013 (for Model A340–500 and –600 series airplanes).

(2) At the latest of the times specified in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD, do the operational test specified in paragraph (g)(1) of this AD.

(i) Within 48 months since first flight of the airplane.

(ii) Within 48 months since accomplishing the most recent operational test specified in the applicable Airbus All Operator Telex (AOT) A330–27A3185 or AOT A340–27A4181, both dated January 4, 2012.

(iii) Within 24 months after the effective date of this AD.

(h) Replacement of Affected SSCs

If, during any operational test required by paragraph (g)(1) of this AD, the hydraulic locking function of an SSC fails the test, before further flight, replace the affected SSC with a serviceable part, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i), (g)(1)(ii) or (g)(1)(iii) of this AD.

(i) No Terminating Action

Doing the replacement required by paragraph (h) of this AD is not terminating action for the repetitive operational tests required by paragraph (g) of this AD.

(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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; 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.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information European Aviation Safety Agency Airworthiness Directive 2013–0251 dated October 15, 2013; Correction dated October 16, 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–2014–0228.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email airworthiness.A330-A340@airbus.com; Internet <http://www.airbus.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.

Issued in Renton, Washington, on April 4, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–08319 Filed 4–11–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2013–1018]

RIN 1625–AA08

Special Local Regulation; Seattle Seafair Unlimited Hydroplane Race, Lake Washington, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to amend the duration of the special local regulations for the Seattle Seafair Unlimited Hydroplane Race by extending the time frame that is

currently listed. This proposed change is necessary in order to correctly reflect the time frame published by Seafair and to ensure the effectiveness of the regulation for the entirety of the event as outlined in the Seafair Notice to Boaters.

DATES: Comments and related material must be received by the Coast Guard on or before June 13, 2014.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal:*
<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail or Delivery:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LTJG, Nathaniel P. Clinger, Coast Guard Sector Puget Sound, Waterways Management Division, U.S. Coast Guard; telephone (206) 217-6045, email SectorPugetSoundWWM@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each

comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2013-1018] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG- 2013-1018) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets

in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

On July 2, 2001, the Coast Guard published a final rule (66 FR 34822) that established the special local regulations in 33 CFR 100.1301 for the safe execution of the Seattle Seafair Unlimited Hydroplane races on the waters of Lake Washington.

C. Basis and Purpose

Coast Guard District Commanders are authorized to promulgate special local regulations necessary to insure safety of life on the navigable waters immediately prior to, during, and immediately after the approved regatta or marine parade. This proposed rule amends the currently listed time in which the rule is in effect for each day of the Seafair Unlimited Hydroplane Race event. This proposed amendment is necessary to ensure that the regulations in 33 CFR 100.1301 are in effect during and immediately following the marine event.

D. Discussion of Proposed Rule

We propose to make stylistic revisions and amend the effective times listed in 33 CFR 100.1301 by changing the effective time currently published in the regulation from 8 a.m. until 8 p.m. to 8:00 a.m. until 11:59 p.m. Pacific Daylight Time.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order

13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard bases this finding on the fact that the amendment of the effective period of the regulation is not significantly greater in duration than the effective period currently established in the regulation.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which may be small entities; the owners and operators of vessels intending to operate in the waters covered by the special local regulation while it is in effect. This proposed rule would not have a significant economic impact on a substantial number of small entities because the amendment of the special local regulation would increase the duration of the rule for a minimal amount of time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would

not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the amendment of the special local regulation outlined in 33 CFR 100.1301. This proposed rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Special Local Regulations.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

■ 2. In § 100.1301 revise paragraph (a) to read as follows:

§ 100.1301 Seattle seafair unlimited hydroplane race.

(a) This section is in effect annually for one week or less during the last week in July and the first two weeks of August. The specific dates that this section will be in effect will be published in the Local Notice to Mariners. This section will be in effect from 8:00 a.m. until 11:59 p.m. Pacific Daylight Time, on the dates published in the Local Notice to Mariners.

* * * * *

Dated: March 5, 2014.

R.T. Gromlich,

*Rear Admiral, U. S. Coast Guard,
Commander, Thirteenth Coast Guard District.*

[FR Doc. 2014-08235 Filed 4-11-14; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 140, 141, 142, 143, 144, 145, 146, and 147

46 CFR Parts 10, 11, 12, 13, 14, and 15

[Docket No. USCG-2013-0175]

RIN 1625-AC10

Training of Personnel and Manning on Mobile Offshore Units and Offshore Supply Vessels Engaged in U.S. Outer Continental Shelf Activities

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering expanding its maritime safety training requirements to cover all persons other than crew working on offshore supply vessels (OSVs) and mobile offshore units (MOUs) engaged in activities on the U.S. Outer Continental Shelf (OCS), regardless of flag. This is necessary to enhance personnel preparedness for responding to emergencies such as fire, personal injury, and abandon ship situations in hazardous environments. We seek comments on the following topics: the sufficiency of existing maritime safety training and the value of additional maritime safety training for maritime

crew and persons other than crew on OSVs and MOUs; an MOU's safety organizational structure (defining levels of authority and lines of communication); the professional education and service requirements for industrial officers on MOUs; the sufficiency of manning regulations on MOUs and OSVs; and any available economic data on current labor market trends and conditions as well as the current costs, benefits, and effectiveness of mandated maritime safety training courses and programs for maritime crew and persons other than crew.

DATES: Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before July 14, 2014 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG-2013-0175 using any one of the following methods:

(1) *Federal eRulemaking Portal:*

<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this advance notice of proposed rulemaking, call or email Mr. Gerald Miente, Maritime Personnel Qualifications Division (CG-OES-1), U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593; telephone 202-372-1407, or email gerald.p.miente@uscg.mil. If you have questions on viewing or submitting material to the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

- I. Public Participation and Request for Comments
 - A. Submitting Comments
 - B. Viewing Comments and Documents
 - C. Privacy Act

- D. Public Meeting
- II. Abbreviations
- III. Background
 - A. General
 - B. Outer Continental Shelf Lands Act
 - C. Coast Guard's Relationship to the Bureau of Safety and Environmental Enforcement
 - D. The BSEE's Safety Regulations
 - E. Offshore Supply Vessels
 - F. Mobile Offshore Drilling Units
 - G. Manning
- IV. Advance Notice of Proposed Rulemaking Discussion
 - A. Maritime Safety Training for Persons Other Than Crew on Offshore Supply Vessels and Mobile Offshore Units
 - B. Safety Organizational Structure
 - C. Officers on Mobile Offshore Drilling Units
 - D. Manning
- V. Information Requested
 - A. Maritime Safety Training for Persons Other Than Crew on Offshore Supply Vessels and Mobile Offshore Units
 - B. Safety Organizational Structure
 - C. Officers on Mobile Offshore Drilling Units
 - D. Manning
 - E. Economic Data
 - F. Regulatory Coordination With Other Federal Agencies

I. Public Participation and Request for Comments

We encourage you to respond to this advance notice of proposed rulemaking (ANPRM) by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2013-0175), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and insert "USCG-2013-0175" in the "Search" box. Click on "Submit a Comment" in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached

the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> “USCG–2013–0175” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. If you do not have access to the Internet, you may view the docket by visiting the Docket Management Facility in Room W12–140 on the ground floor of the U.S. Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by searching for the name of the individual who submitted the comment (or who signed the comment, if the comment was submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the *Federal Register* (73 FR 3316).

D. Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the *Federal Register*.

II. Abbreviations

ANPRM Advance notice of proposed rulemaking
BCO Ballast control operator
BS Barge supervisor
BT Basic training
CFR Code of Federal Regulations
FLOATEL/ASV Floating hotel/
accommodation service vessel
IMO International Maritime Organization
MOA Memorandum of Agreement
MODU Mobile offshore drilling unit
MOU Mobile offshore unit
OCS U.S. Outer Continental Shelf
OCSLA Outer Continental Shelf Lands Act
OIM Offshore installation manager
OSV Offshore supply vessel
SEMS Safety and Environmental
Management System
PIC Person in charge

STCW International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended

U.S.C. United States Code

III. Background

A. General

The offshore mineral and oil industry on the U.S. Outer Continental Shelf (OCS) expanded significantly in the last decade. With this expansion, technological advancements moved operations further offshore and into deeper water. Consequently, this extension of operations limits the availability of emergency resources in both response time and amount of assistance available. Today, more people and companies are involved in exploration, drilling, production, anchor handling, diving, oil spill response operations, and other such activities than ever before.

Recent incidents, including the explosion on, and subsequent sinking of the mobile offshore drilling unit (MODU)¹ DEEPWATER HORIZON, highlight the need for maritime crew and persons other than crew working on the OCS to better understand decision-making authority and proper response actions in emergency situations,² particularly since a large number of the maritime crew and persons other than crew work in hazardous conditions. Maritime crew are mariners who are required by an Officer in Charge, Marine Inspection to be listed on a vessel’s Certificate of Inspection (46 CFR 15.501) or on another administration’s safe manning document. The “maritime crew” are the Coast Guard-credentialed mariners who operate the vessel in accordance with the Certificate of Inspection (Safe Manning Document), e.g., master, mate, engineer, deckhand, and able seaman. The maritime crew may also include the offshore installation manager, barge supervisor, and ballast control operator. Persons

¹ A MODU is defined in 46 CFR 10.107(b).

² See an excerpt from the U.S. Coast Guard’s *Report of Investigation into the Circumstances Surrounding the Explosion, Fire, Sinking and Loss of Eleven Crew Members Aboard the MODU DEEPWATER HORIZON in the GULF OF MEXICO*, which found “Certain crew actions during the event itself indicated that Transocean’s emergency drills did not properly prepare the crew for a simultaneous well control, fire, and abandon ship.” The excerpt is on p. 102 at https://homeport.uscg.mil/mycg/portal/ep/contentView.do?channelId=18374&contentId=323899&programId=21431&programPage=%2Fep%2Fprogram%2Feditorial.jsp&pageTypeId=13489&contentType=EDITORIAL&BV_SessionID=@@@@1768583495.1392047223@@@&BV_EngineID=cccdmfjdfjimecfngcjkndfhdfgo.0 OR you can locate the report at <http://Homeport.uscg.mil> >Missions >Investigations >Marine Casualty Reports >DEEPWATER HORIZON—FINAL REPORT.

other than crew comprise all other personnel who either ride on the vessel or work on the vessel, (e.g., offshore worker, commercial diver, anchor handling personnel, remotely operated vehicle (ROV) operator, oil-spill response worker, industrial personnel who work on rigs, occasional specialty worker, company personnel, and visitors).

On the day of the incident, the DEEPWATER HORIZON was drilling a well that was 13,000 feet deep in approximately 5,000 feet of water. A total of about 126 people, including the maritime crew and persons other than crew were on board. There were 115 people aboard who successfully evacuated and survived. However, 11 people were missing and presumed dead, and 16 were injured.

Further evidence shows the risk of hazardous incidents on mobile offshore units (MOUs). (For the purposes of this ANPRM, an MOU means a vessel that can be readily relocated, and is capable of performing an industrial function that involves offshore operations other than those traditionally provided by vessels covered by chapter I of the International Convention for the Safety of Life at Sea, 1974 (SOLAS).)³ In November 2012, the FLOATEL SUPERIOR evacuated 374 people due to a damaged ballast tank. Damage was slight and allowed time for people mustered at the lifeboat stations to be successfully evacuated by helicopter. A more pressing and dangerous scenario could have led to different, less favorable results.

Current Coast Guard regulations require, at a minimum, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW) basic safety training for maritime crew working on the OCS. (See Section III. E. Offshore Supply Vessels for STCW basic safety training requirements.)

With this rulemaking, our goal is to enhance personnel preparedness for persons other than crew (U.S. and foreign) when responding to emergencies such as fire, personal injury, and abandon ship situations in hazardous environments. Additionally, we seek to ensure that persons other than crew receive basic maritime safety training on offshore supply vessels (OSVs) and MOUs engaged in OCS activities,⁴ regardless of flag, consistent

³ See International Maritime Organization (IMO) Resolution A.891(21), *Recommendations on Training of Personnel on Mobile Offshore Units (MOUs)*, (adopted November 25, 1999), February 4, 2000.

⁴ An OCS activity means any offshore activity associated with exploration for, or development or

with the International Maritime Organization's (IMO) recommendations for maritime safety training (see Section IV. Advance Notice of Proposed Rulemaking Discussion). Further, we seek to ensure that this training is standardized and transferrable from one vessel type to another to avoid duplication of effort.

B. Outer Continental Shelf Lands Act

Under the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331–1356a), the Coast Guard is responsible for developing and implementing regulations to protect the safety of life, property, and the environment on OCS installations, vessels, and units engaged in OCS activities, including the regulation of workplace safety and health.⁵ Chapter I, subchapter N of Title 33 of the Code of Federal Regulations (CFR) contains regulations pertaining to OCS facilities, vessels, and other units engaged in OCS activities, which are intended to promote workplace safety and health.

C. Coast Guard's Relationship to the Bureau of Safety and Environmental Enforcement

The Department of the Interior's Bureau of Safety and Environmental Enforcement (BSEE) has authority under OCSLA⁶ to regulate oil, gas, and sulphur exploration, development, and production operations on the OCS. The Coast Guard closely coordinates with the BSEE on shared jurisdiction and coordination of activities related to OCS facilities and units in order to minimize duplication of effort and to aid both agencies in the successful completion of their assigned missions and responsibilities. The Coast Guard and the BSEE use a Memorandum of Understanding and Memoranda of Agreement to coordinate consistency of regulations and policies where shared responsibilities exist and to provide each other relevant information for review and comment throughout the regulatory and policy development process.⁷

D. The BSEE's Safety Regulations

The BSEE requires all OCS lessees or their designated operators to develop, implement, and maintain a Safety and Environmental Management System (SEMS) program (see 30 CFR 250,

subpart S). The SEMS program is intended to be a nontraditional, performance-focused tool for integrating and managing offshore operations. The goal of the SEMS program⁸ is to "promote safety and environmental protection by ensuring all personnel on a facility" comply with the policies and procedures in the SEMS plan. The BSEE describes the scope of its jurisdiction by using the term "facility," which encompasses MODUs, installations, and devices that are permanently or temporarily attached to the seabed.⁹ The SEMS regulations require that the SEMS program establish and implement a training program so that all personnel are trained in accordance with their duties and responsibilities to work safely and are aware of potential environmental impacts.¹⁰ The SEMS regulations also require that all personnel be trained to competently perform their assigned well control, deepwater well control, and production safety duties.¹¹ The SEMS regulations also address operating procedures, safe work practices, and emergency response and control measures.¹²

Both the BSEE and the Coast Guard have authority to regulate MODUs. The agencies entered into a Memorandum of Agreement (BSEE/USCG MOA: OCS-08, effective on June 4, 2013) to identify each agency's responsibility for regulation, inspection, and oversight of systems and sub-systems on MODUs.¹³ Annex 1 of the MOA designates the Coast Guard as the lead agency for regulatory oversight in certain areas. The areas applicable to this ANPRM are: 10.a through e (Fire Protection); 15.a and b (Pollution Prevention); 18 (Life Saving Equipment); 22.g (Drills-fire, abandon, and lifeboat); and 22.k (Inspection and testing of marine and lifesaving equipment). The Coast Guard's consideration of maritime safety training requirements are in the areas of familiarization, personal survival, fire prevention and fire fighting, elementary first aid, and personal safety and social responsibilities. Since the BSEE SEMS requirements do not apply to these areas, there will be no duplication between the maritime safety training requirements we are considering in this ANPRM and the BSEE SEMS regulations. There will also be no duplication of requirements with regards to OSVs because the BSEE does

not have jurisdiction to regulate personnel working on this type of vessel.

E. Offshore Supply Vessels

Offshore supply vessels serve a variety of functions in support of the exploration, exploitation, or production of offshore mineral or energy resources, which may include carrying offshore goods and supplies; handling anchors and mooring equipment; or delivering excess fuel to oil production facilities. They also perform other support functions such as serving as floating hotels/accommodation service vessels (FLOATELS/ASVs) that provide sleeping, dining, and recreational quarters for persons other than crew who must remain close to a drilling or mineral production unit and for whom quarters are not available on the drilling or production unit.

Developments in the U.S. offshore industry created demand for larger OSVs than allowed in the past. As previously pointed out, the U.S. offshore industry became more complex over time. Consequently, there is greater demand for larger, multi-purpose OSVs that are capable of: (1) Operating at greater distances from shore and for more extended periods using larger and more advanced propulsion or machinery systems; (2) carrying more cargo and more people on board; and (3) serving as a platform for specialized services related to the exploration, exploitation, and completion of sub-sea resources. Until recently, however, a statute limited the size of OSVs to less than 500 gross register tons as measured under 46 U.S.C. 14502, or to an alternate tonnage established as 6,000 gross tonnage as measured under 46 U.S.C. 14302. In response, Congress removed the size limit on OSVs in 2010 (see Pub. L. 111–281, section 617(a)). Modifications to existing OSV regulations to safely increase the size of OSVs are being developed to address hazards associated with larger vessels carrying more cargo and personnel, including regulations pertaining to mariner training.¹⁴

Existing regulations require maritime crew operating on U.S.-flagged OSVs to be credentialed and comply with the STCW's basic safety training as required in 46 CFR parts 11 and 12. This training includes: (1) Personal survival techniques, (2) fire prevention and firefighting, (3) elementary first aid, and (4) personal safety and social

production of, the minerals of the Outer Continental Shelf (33 CFR 140.10).

⁵ See 43 U.S.C. 1347(c).

⁶ See 43 U.S.C. 1334.

⁷ BSEE-USCG Memorandum of Understanding and Memoranda of Agreements are publicly available (at <http://www.bsee.gov/BSEE-Newsroom/Publications-Library/Interagency-Agreements/>).

⁸ See 30 CFR 250.1901.

⁹ See 30 CFR 250.105.

¹⁰ See 30 CFR 250.1915.

¹¹ See 30 CFR part 250.

¹² See 30 CFR 250.1915.

¹³ See footnote 7 for availability of the BSEE/USCG MOU and MOAs.

¹⁴ Additional regulatory changes to address safety concerns of larger OSVs are being developed by the Coast Guard under a separate rulemaking (see RIN 1625-AB62 at www.reginfo.gov).

responsibilities, as set out in section A-VI/1 of the STCW Code.¹⁵ Maritime crew on foreign-flagged OSVs are credentialed under the laws of the flag state and also receive basic safety training in accordance with the STCW.

Coast Guard regulations require safety orientation for offshore workers on board U.S.-flagged OSVs as found in 46 CFR 131.320. These requirements were originally intended for offshore workers in transit from a shore-based staging area to the OSV. However, the role of the OSV has expanded to serve as a base of operations for other offshore activities, such as diving, ROV operations and seismic surveys. Persons other than crew involved in these operations work and live aboard these vessels during the entire activity and are not transient workers, as the current regulations were designed to protect. Section 131.320 currently requires that the Master inform persons other than crew of certain basic safety information including, but not limited to, emergency and evacuation procedures; locations of emergency exits; embarkation areas for survival craft; and storage areas for lifejackets and immersion suits, along with instructions on how to don and adjust the jackets and suits. Such safety orientation must also include information on the types and locations of any other lifesaving device(s) carried on the vessel, the location and contents of safety placards, as well as any conditions or circumstances that constitute a risk to safety. This training is not equivalent to the STCW's basic safety training requirements; therefore, we seek to broaden maritime safety training requirements for transient offshore workers as well as for persons other than crew working on U.S. OSVs engaged in activities on the OCS. We are also considering making these requirements applicable to all persons other than crew working on foreign-flagged OSVs engaged in activities on the OCS. Our goal is to enhance personnel preparedness for responding to emergencies such as fire, personal injury, and abandon ship situations in hazardous environments, regardless of flag.

F. Mobile Offshore Drilling Units

MODUs are a particular type of MOU. Some MODUs are self-propelled and certified to navigate independently, while others rely on arrangements of intricate anchoring systems for the purpose of holding the unit on station. Maritime crew and persons other than

crew typically work in 12-hour shifts in very physically demanding and especially dangerous conditions. Drilling operations can be extremely complex and can expose these workers to a potentially combustible and hazardous atmosphere because of the presence of oil, gas, drilling mud, and cement. Given such prevalent conditions, it is critical that all maritime crew and persons other than crew receive adequate maritime safety training.

Regulations for the credentialing and required STCW basic safety training of maritime crew are in 46 CFR parts 11 and 12. The Coast Guard issues officer endorsements for three categories of industrial officers who work on U.S.-flagged MODUs. These are the offshore installation manager (OIM), barge supervisor (BS), and ballast control operator (BCO).¹⁶ Regulations for training and sea service requirements for the OIM, BS, and BCO are found in 46 CFR 11.470, 11.472, and 11.474, respectively. Depending on the type of unit the three categories of industrial officers are working on these officers may also hold a maritime credential as a Master or Chief Mate, which would subject them to compliance with the STCW basic safety training requirements. Coast Guard regulations contained in §§ 11.470, 11.472, and 11.474 require some safety-related training courses for these three categories of industrial officers, which include well control/blowout prevention for the OIM, as well as survival suits/survival craft, and firefighting training for all three categories of industrial officers. However, the training in §§ 11.470, 11.472, and 11.474 is not equivalent to the STCW's basic safety training requirements for maritime crew.

The Coast Guard's regulations for the safety orientation of maritime crew and industrial workers working aboard U.S.-flagged MODUs are in 46 CFR 109.213. ("Industrial workers" are considered persons other than crew in this ANPRM.) These regulations require emergency training and drills. Training manuals or audiovisual media that describe abandonment of the unit must be available to all maritime crew and industrial workers on board. Each maritime crew and industrial worker on board must also be assigned and become familiar with his/her emergency duties before working on the unit. Drills and instructions must be conducted for abandonment, fire, and line-throwing apparatus. Additional training under 46

CFR 109.213 on survival skills is required for "persons with designated responsibility for the survival of others" beyond what is required for "persons without designated responsibility for the survival of others."

The STCW's basic safety training regulations do not apply to industrial officers without maritime credentials. These same regulations also do not apply to industrial workers. The safety-related training requirements in 46 CFR 11.470, 11.472, and 11.474 and 109.13 are not equivalent to the STCW basic safety training; therefore, we seek to expand maritime safety training for industrial officers and industrial workers working on U.S. MODUs. We are also considering making these requirements applicable to all persons other than crew working on foreign-flagged MODUs. Our goal is to enhance personnel preparedness for responding to emergencies such as fire, personal injury, and abandon ship situations in hazardous environments, regardless of flag.

G. Manning

The cognizant Officer in Charge, Marine Inspection sets the manning requirements for the maritime crew on a specific MODU in accordance with 46 CFR 15.520, or on an OSV based on the regulations in 46 CFR 15.705. Before issuing a safe manning document in the form of a Certificate of Inspection, the Officer in Charge, Marine Inspection usually consults with the vessel's owner/operator, applies headquarters' policy as well the district's policy, if any, and he or she takes into consideration the purpose of the vessel and its mode and area of operation.

IV. Advance Notice of Proposed Rulemaking Discussion

A. Maritime Safety Training for Persons Other Than Crew on Offshore Supply Vessels and Mobile Offshore Units

New regulatory standards and amendments to existing requirements on maritime safety training for persons other than crew are needed to ensure consistency in safety, efficiency, and environmentally conscious practices. Once finalized, the maritime safety training regulations would produce a standard that would be applicable to persons other than crew on all OSVs and MOUs engaged in OCS activities, regardless of flag.

The Coast Guard reviewed IMO Resolution A.891(21), titled "Recommendations on Training of Personnel on Mobile Offshore Units (MOUs)," which provides an international standard for maritime

¹⁵ See International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended.

¹⁶ OIM, BS, and BCO are defined in 46 CFR 10.107(b).

safety training on MOUs. We considered certain provisions of this resolution as a source in guiding our preliminary thoughts regarding potential regulations for maritime safety training standards, and we seek comments on them. We developed a table that adopts certain provisions from the resolution using categories based on personnel type, and the recommended type of maritime safety training courses and/or programs. Levels of training are commensurate with the duties and responsibilities borne by each individual as noted in Table 1. The table categories are: (A) Visitors and persons other than crew who are not regularly assigned, but are on board for a limited time and have no tasks in relation to normal operations of the unit; (B) persons other than crew without designated responsibility for the safety and survival of others; (C) regularly assigned persons other than crew with designated responsibility for the safety and survival of others; and (D) maritime crew.

The Coast Guard particularly seeks industry comment on the need for additional maritime safety training, such as crowd management, crisis management and human behavior, specialized on-the-job training, or structured courses and/or programs that might be necessary, but are not otherwise mentioned in this ANPRM.

B. Safety Organizational Structure

In order to ensure that any subsequent proposed rule includes appropriate requirements, a key purpose of this ANPRM is to encourage comments that will identify the safety organizational structure of MOUs. A safety organizational structure includes the responsibilities, authorities, and relationships through which the MOU performs its activities. The organizational structure may be an integral part of a company's management system. Because of the differences between companies, the Coast Guard encourages commenters to describe the responsibilities of individuals with regard to safety matters, as well as the communication mechanisms that (1) promote cooperation between the maritime crew and persons other than crew, (2) ensure a successful response to any emergency on board MOUs, and (3) ensure that people in the relevant capacities are available to perform their safety responsibilities.

The Coast Guard seeks information on the particular protocol for designating a unit's OIM and for assigning overall final decision-making and well control authority in case of a maritime emergency, such as a blowout,

explosion, fire, or unit abandonment. The Coast Guard is especially looking for examples of how companies operating self-propelled MODUs define the levels of authority and lines of communication within the unit (e.g., Master and OIM) and between shoreside and unit personnel.

We seek information on how safety and industrial operations are currently practiced, the order of precedence given to organizational responsibilities, and the measures taken to maintain the safety of the unit and personnel. We would like to determine whether the Master working on a self-propelled unit, including a MODU, is responsible and in charge, without constraints by the unit owner or operator, of the response to an emergency. We also seek to determine whether the OIM or an equivalent industrial officer working on a non-self-propelled unit, including a MODU, is responsible for the unit without constraints by the unit owner or operator on the response to an emergency. Further, the Coast Guard seeks information on any potential conflicts that may exist between the Master and the OIM, as well as conflicts between any other organizational structural positions onboard the unit or on shore.

C. Officers on Mobile Offshore Drilling Units

The Coast Guard requests that commenters identify the duties and responsibilities of the OIM, the BS, and the BCO, including their responsibilities during emergency situations. We are asking for comment on the sufficiency of these industrial officers' endorsement requirements and the possible need to adjust the training and service provisions.

We also seek information on any current method or program for training a person holding an unlimited Master's endorsement to prepare them to obtain an OIM endorsement. This includes suggestions on academic degrees, in addition to engineering degrees and sea service requirements, or other creditable experience in lieu of those expressly stated in 46 CFR 11.470. We welcome suggestions regarding the application of credit toward the OIM requirements for any training courses or programs received while obtaining a Master's endorsement (e.g., firefighting, stability, and survival suit training) and ask for data on the number of OIMs currently holding a Master's endorsement.

The subjects that will appear on an examination for obtaining a U.S. credential with OIM, BS, and BCO MODU endorsements are specified in 46 CFR 11.920. Similarly, the Coast Guard

requests comments about whether these subjects are still relevant and if any should be deleted from, or added to this section of the regulations.

D. Manning

Emerging technology and the expanded practice of using MOUs and OSVs as multipurpose units and vessels point to the possible need to re-assess the Coast Guard's manning principles. As MODUs become increasingly larger in design and operations and are navigated in deeper waters farther from shore, the Coast Guard is concerned about whether there should be additional engineers and mates assigned to these vessels. Also, we ask several open-ended questions in the section that follows in this ANPRM to give individuals in industry a chance to offer their specific views on any manning issue. The Coast Guard seeks comments regarding how current regulations serve industry and if there are any suggestions or concerns with current manning standards, whether they are related to the normal service or particular to the multiple uses of these units or vessels. We also ask several MODU-specific questions regarding certain industrial officers and one question regarding ice pilots.

V. Information Requested

The Coast Guard seeks comment from the public on a variety of OSV and MOU standards.

We have organized the discussion into the following five sections: *A. Maritime Safety Training for Persons Other than Crew on Offshore Supply Vessels and Mobile Offshore Units*; *B. Safety Organizational Structure*; *C. Officers on Mobile Offshore Drilling Units*; *D. Manning*; *E. Economic Data*; and *F. Regulatory Coordination with Other Federal Agencies*. Public responses to these questions will help the Coast Guard develop a more complete and carefully drafted rulemaking. Please support your comment with quantitative data where possible, and include sources and complete citations for any data. The questions are neither all-inclusive, nor are responses to all questions necessary. Any supplemental information regarding the topics that follow is welcome. As you respond to a question, PLEASE INDICATE THE SPECIFIC NUMBER OF THE QUESTION YOU ARE ADDRESSING.

A. Maritime Safety Training for Persons Other Than Crew on Offshore Supply Vessels and Mobile Offshore Units

Information in Table 1 was extrapolated from the recommended

training in IMO Resolution A.891(21). (For a full description of the table, see section IV.A. of this ANPRM.) We request comments on the levels of training for three categories of personnel (A, B, and C)¹⁷ listed in the table. Please indicate the specific number of the question you are addressing.

TABLE 1—MARITIME SAFETY TRAINING FOR PERSONS OTHER THAN CREW ON THE U.S. OCS*

Type of worker			
Category A	Category B	Category C	Category D
Visitors and persons other than crew not regularly assigned who are on board for a limited period of time, in general not exceeding 3 days, and have no tasks in relation to normal operations of the unit.	Other persons other than crew without designated responsibility for the safety and survival of others.	Regularly assigned persons other than crew with designated responsibility for the safety and survival of others.	Maritime crew members.
Training			
Training in offshore orientation; familiarization training or sufficient information and instruction in personal survival techniques and workplace safety.	Training in offshore orientation; familiarization training or sufficient information and instruction in personal survival techniques and workplace safety. Training in personal survival, fire prevention and fire-fighting, elementary first aid, personal safety and social responsibilities (as set out in tables 5.3.1 to 5.3.5, basic training (BT) of Resolution A.891).	Training in offshore orientation; familiarization training or sufficient information and instruction in personal survival techniques and workplace safety. Training in personal survival, fire prevention and fire-fighting, elementary first aid, personal safety and social responsibilities (as set out in tables 5.3.1 to 5.3.5, BT of Resolution A.891). Additional training in accordance with their duties and responsibilities—STCW training in survival craft and rescue boats, fast rescue boats, adv. fire-fighting, and medical first aid. [Person in charge (PIC) medical care, if assigned]. Familiarization training on unit-specific equipment.	Training in offshore orientation; familiarization training or sufficient information and instruction in personal survival techniques and workplace safety. Training in personal survival, fire prevention and fire-fighting, elementary first aid, personal safety and social responsibilities (BT in accordance with STCW Regulation VI/1). Additional training in accordance with their duties and responsibilities—STCW training in survival craft and rescue boats, fast rescue boats, adv. fire-fighting, and medical first aid [PIC medical care; if assigned]. Familiarization training on unit-specific equipment.

* Note: This table is based on information found in IMO Resolution A.891(21).

Q–A1. What kind of maritime safety training courses and/or programs are currently afforded to persons other than crew on board MOUs and OSVs? Is Table 1 (adapted from information in IMO Resolution A.891(21)) a good representation of the levels of training appropriate for the categories of persons other than crew listed?

Q–A2. What suggestions do you have regarding the inclusion or modification of the personnel categories and relevant maritime safety training in the table?

Q–A3. Should any key maritime crew or persons other than crew on board be required to take crowd management training, and crisis management and human behavior training courses (similar to maritime crew and persons other than crew on passenger vessels)? For what size complement? For what type of vessel? How do existing FLOATELS/ASVs ensure the safety of

large numbers of embarked persons other than crew in case of emergency?

Q–A4. Is there any specialized safety training that should be required on OSVs that is particular to the various functions these vessels can perform?

Q–A5. Have any incidents occurred involving individuals who had not received safety training? If so, please describe the incident. Would the outcome have changed had those individuals received safety training? Why were they not trained?

Q–A6. What types of safety drills should be required of every person on an MOU?

B. Safety Organizational Structure

The Coast Guard seeks to understand and requests information on a unit's organizational structure as it pertains to safety, including the levels of authority and lines of communication by which operations are carried out, and the duties and responsibilities of the three

categories of industrial officers who are issued credentials by the Coast Guard and direct the industrial work on board a MODU.

Please provide information on the performance of drilling operation emergency exercises and how these drills are performed safely, including the number of offshore workers involved, the length and frequency of the drills, the equipment needed and resources required.

Also, the Coast Guard seeks information on the responsibilities of persons other than crew on board OSVs serving as FLOATELS/ASVs with regard to safety matters, and the communication mechanisms that promote cooperation on board the vessel to ensure that people in the relevant capacities are available to perform their safety responsibilities. Please indicate the specific number of the question you are addressing.

¹⁷ Category D—we are not seeking information for this category because existing Coast Guard

regulations contain training requirements for maritime crew.

Q-B1. Who has the ultimate and final decision-making authority on board a MODU or other MOU for industrial operations, marine operations, and emergency response? If there is more than one person, how and when is the decision-making authority transferred during an emergency? How is this decision-making defined by unit type and operational status? Is this practiced, and if so, how often and what resources are required?

Q-B2. Who on board a MODU is responsible for well control and would be the primary person to give the order to shut-in the well?

Q-B3. Where is well control delegation found in a MODU's company documentation?

Q-B4. How do companies operating self-propelled MOUs define the levels of authority and the lines of communication both within the unit, and between shoreside and unit personnel?

Q-B5. Should drilling operation/well control emergency drills and vessel emergency evacuation drills on a MODU be performed and, if so, what drills can be performed safely? What resources are required for such drills?

Q-B6. What are the responsibilities of the maritime crew toward persons other than crew on board MOUs in case of an emergency?

Q-B7. What are the responsibilities of persons other than crew on MOUs in case of an emergency?

C. Officers on Mobile Offshore Drilling Units

The Coast Guard seeks comments on the existing professional education and service requirements of the OIM, the BS, and the BCO.

Additionally, we seek comments on the possible need to create new MODU-specific endorsements for "Master (MODU)" and "Chief mate (MODU)" as well as the associated education, training, and knowledge that industry feels is necessary. Please indicate the specific number of the question you are addressing.

Q-C1. What are the duties and responsibilities of an OIM?

Q-C2. What are the duties and responsibilities of a BS?

Q-C3. What are the duties and responsibilities of a BCO?

Q-C4. Is the current structure of officer endorsement (licensing) for MODUs still valid and does it cover the current and anticipated future needs of the offshore drilling/production industry?

Q-C5. Should the Coast Guard consider issuing a Master (MODU)-specific endorsement? Is there need for

a "Chief mate (MODU)" or "Mate (MODU)" endorsement?

Q-C6. Referring to Q-C5, if the answer is yes, what practical/theoretical knowledge requirements should be needed for each endorsement (leading to the development of a possible course and/or program)?

Q-C7. Referring to Q-C5, what should be the service requirements for each endorsement?

Q-C8. Would a Master or Mate (unrestricted) necessarily have to start over to comply with all the requirements of 46 CFR 11.470, 11.472, and 11.474, or would you recommend alternative training courses and/or programs and experience criteria?

Q-C9. What are your suggestions regarding the acceptance of equivalencies of the education (degree), and individual course and/or program requirements for:

(a) An OIM (who holds an unlimited Master's officer endorsement); and

(b) A BS/BCO (who holds an unlimited Chief mate's officer endorsement)?

Q-C10. On a self-propelled U.S.-flagged MODU (other than a drillship), is the Master with an OIM endorsement, required by 46 CFR 15.520(d), actually filling the position of the OIM or is another person brought on board and assigned to serve as the OIM?

Q-C11. Within your company, how many OIMs currently hold a Master's endorsement?

Q-C12. Is there a need for additional or alternative Coast Guard credentialed positions aboard MODUs including, but not limited to, crane operator, remotely operated vehicle operator, or maintenance supervisor?

D. Manning

The Coast Guard seeks comments regarding how current regulations serve industry and if there are any suggestions or concerns with current manning standards, whether they are related to the normal service or particular to the multiple uses of these units or vessels. We also ask several MODU-specific questions regarding certain industrial officers and one question to elicit information on ice pilots. Please indicate the specific number of the question you are addressing.

Q-D1. Should the Coast Guard require a Chief engineer aboard a MODU? If so, how many assistant engineers should we require and what would be the associated costs and benefits?

Q-D2. Should the Coast Guard require a Chief mate aboard a MODU? If so, how many additional mates should we require and what would be the associated costs and benefits?

Q-D3. Are there any other manning issues regarding both self-propelled and non-self-propelled MOUs that industry recommends the Coast Guard address?

Q-D4. Are there any manning issues regarding OSVs that industry recommends the Coast Guard address?

Q-D5. Do you know if any U.S. licensed maritime crew has ice pilot experience as a navigator in arctic waters, and if so, how many? (Specifically, the U.S. licensed maritime crew's experience would include monitoring and formulating strategies to guard against ice floes.)

E. Economic Data

Finally, the Coast Guard seeks any available economic data regarding maritime crew and persons other than crew working on MOUs and OSVs engaged in OCS activities on the OCS. We seek information on the current labor market trends and conditions; current maritime safety training courses the maritime crew are required to complete; and the costs, benefits, and effectiveness of those training courses and/or programs. Please indicate the specific number of the question you are addressing.

Q-E1. What data or information exists that the Coast Guard could use to estimate the number of U.S. maritime crew and U.S. persons other than crew per U.S. flagged MOU and OSV, and the average number of maritime crew and persons other than crew per foreign-flagged MOU and OSV? Similarly, are there any sources documenting the number of MOUs (both U.S. and foreign-flagged) by unit types (e.g., accommodation units, crane units, construction and maintenance units, drilling tenders, pipe and cable laying units, wind turbine installation units, and maintenance and repair units)?

Q-E2. What are the current labor market trends and conditions for U.S. and non-U.S. maritime crew and persons other than crew working on MOUs and OSVs? Specifically, are there any current or projected shortages of qualified maritime crew and persons other than crew on MOUs and OSVs? Also, are current wages and total compensation for the maritime crew and persons other than crew working on MOUs and OSVs competitive with the rest of the oil, gas, and marine industries?

Q-E3. Do you provide training similar to that described in Table 1? What are the costs associated with current training courses and/or program requirements for U.S. and non-U.S. maritime crew as well as U.S. and non-U.S. persons other than crew working on MOUs and OSVs? How long does

this training take? Also, is there any data or information that could be used to estimate the costs of these maritime safety training courses and/or programs? Is it conducted on board by maritime crew or by outside resources? Who pays

for the maritime safety training courses and/or programs—the maritime crew/ persons other than crew, or his/her employer? How many maritime crew/ persons other than crew are trained per year? What is the cost of training? Please

list your answers in Table 2. (When answering the question, refer to Table 1—Maritime Safety Training for Persons Other than Crew on the U.S. OCS.)

TABLE 2—COSTS ASSOCIATED WITH CURRENT TRAINING COURSES/PROGRAMS

	Category A	Category B	Category C
Do you provide training similar to that described in Table 1? What are the costs associated with current training courses and/or program requirements for U.S. and non-U.S. maritime crew and U.S. and non-U.S. persons other than crew working on MOUs and OSVs? How long does this training take? Also, is there any data or information that could be used to estimate the costs of these maritime safety training courses and/or programs? Is it conducted on board by maritime crew or by outside resources? Who pays for the maritime safety training courses and/or programs—the maritime crew/ persons other than crew, or his/her employer? How many maritime crew/ persons other than crew are trained per year? What is the cost of the training?			

Q–E4. What are the kinds of beneficial impacts from safety training? Are there sources of data or information documenting the benefits or avoided costs, which may result from the maritime safety training courses and/or programs that are currently required of the maritime crew and persons other than crew who work on MOUs and OSVs?

Q–E5. How effective are these maritime safety training courses and/or program requirements in terms of reducing fatalities, injuries, and property damage on MOUs and OSVs? Please provide examples of situations in which safety training may have been effective in mitigating the impacts of emergency situations.

F. Regulatory Coordination With Other Federal Agencies

The Coast Guard is also interested in ways to streamline safety training for persons other than crew on OSVs and MOUs with the requirements of other Federal agencies. We are seeking comment on specific aspects where there may be opportunities to improve coordination.

Q–F1. What opportunities exist for increased regulatory efficiency and harmonization of maritime safety training requirements among Federal agencies?

Dated: April 6, 2014.

Robert J. Papp Jr.,

Commandant, U.S. Coast Guard.

[FR Doc. 2014–08359 Filed 4–11–14; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–1063]

RIN 1625–AA11

Regulated Navigation Area; Arthur Kill, NY and NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking

SUMMARY: The Coast Guard is proposing to establish a Regulated Navigation Area (RNA) on the navigable waters of the Arthur Kill in New York and New Jersey from December 2014 through October 2018. This proposed rule would allow the Coast Guard to enforce speed and wake restrictions and prohibit vessel traffic through the RNA during bridge replacement operations on the Goethals Bridge, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. This proposed rule would also allow the Coast Guard to enforce navigation restrictions and prohibit vessel traffic during drilling, blasting, and dredging operations in support of the U.S. Army Corps of Engineers channel deepening project. This proposed rule is necessary to provide for the safety of life in the regulated area during construction on the Goethals Bridge and the channel deepening project.

DATES: Comments and related material must be received by the Coast Guard on or before June 13, 2014.

Requests for public meetings must be received by the Coast Guard on or before May 5, 2014.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: (202) 493–2251.

(3) Mail or Delivery: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is (202) 366–9329.

See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email BMC Craig D. Lapiejko, First Coast Guard District, telephone (617) 223–8351, email Craig.D.Lapiejko@uscg.mil, or LT Hannah Eko, Sector New York Waterways Management, U.S. Coast Guard; telephone (718) 354–4114, email hannah.o.eko@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register

NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2013-1063] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-1063) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this

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

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before May 5, 2014, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are hazardous or in which hazardous conditions are determined to exist. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this proposed rulemaking is to provide for safety on the navigable waters in the regulated area and is prompted by dredging and bridge construction activities in the Arthur Kill.

C. Discussion of Proposed Rule

The Coast Guard proposes to establish a Regulated Navigation Area (RNA) on the navigable waters of the Arthur Kill. This RNA would encompass the Arthur Kill from Port Ivory to the charted Graselli High Wires north of Pralls Island. The proposed RNA would be in effect from December 2014 through October 2018, and enforced at intermittent periods during that time.

Dredging activities will resume in a portion of the Arthur Kill from December 2014 until December 2015. These activities may potentially involve drilling and underwater blasting of bedrock in the Arthur Kill navigable channel. Dredging operations may encroach on portions of the navigable channel, require the relocation of lateral

aids to navigation, and create a reduction in the width of the navigational channel. While most activities within the scope of this project will not require waterway closures, there are certain tasks that can only be completed via closing the waterway.

The Goethals Bridge spans the Arthur Kill at mile 11.5. The current structure of the Goethals Bridge will be replaced with a twin span south of the existing bridge. Work on the bridge commenced in December 2013. New eastbound bridge construction is expected to be undertaken from January 2013 to December 2016. New westbound construction is expected to occur from April 2013 to December 2017. Substantial completion of both bridges is expected to occur in December 2017 with both bridges open at this point. Demolition of the main span of the currently existing bridge is expected to occur in the December 2016 to October 2018 timeframe. The minimum vertical clearance of the bridge is expected to be reduced from 139.9' to 137.9'.

Currently, it is unknown whether explosives will be utilized for demolition purposes or whether the current span will be lowered in increments into barges placed in the Arthur Kill. Final completion of the bridge project is expected to occur in October 2018.

This proposed rule seeks to enhance navigational safety and marine environmental protection, promote vessel movement by reducing the potential for collisions, groundings, and the loss of lives and property, and ensure the safety of vessels and workers from hazards associated with bridge construction operations in the regulated area.

The Captain of the Port (COTP) New York will cause notice of enforcement and suspension of enforcement to be made by all appropriate means to affect the widest distribution among the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, or notices on the Homeport Web site.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory

Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this proposed rule may restrict access to a small portion of the Arthur Kill during some drilling, blasting and some bridge demolition operations, the effect of this regulation would not be significant for the following reasons: The regulated navigation area would be enforced during limited intervals of time. We expect portions of the RNA to be activated for short period while drilling, blasting, or bridge demolition procedures occur. In addition, vessels may be authorized to enter the zone with permission of the COTP. In addition, advance notification for closures will be made via Local Notice to Mariners, Broadcast Notice to Mariners, and at the Homeport Web site.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Arthur Kill from December 2014 to October 2018.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: although the regulated navigation area would apply to the entire width of the river, vessel traffic would be allowed to pass through the regulated navigation area by requesting permission from the COTP. Before the activation of the regulated navigation area, we would issue maritime advisories widely available to users of the river.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a

significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the

effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination

that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a regulated navigation area. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01-1063 to read as follows:

§ 165.T01-1063 Regulated Navigation Area; Arthur Kill, NY and NJ.

(a) *Regulated Area*. The following area is a regulated navigation area: all waters from Port Ivory to Graselli High Wires north of Pralls Island in the Arthur Kill; bounded in the northeast by a line drawn from position 40° 38'43.260" N, 074° 10'47.208" W; to a point in position 40°38'52.152" N, 074° 10'47.748" W; and bounded in the southwest by a line drawn from position 40° 37'8.940" N, 074° 12'19.116" W; to a point in position 40° 37'03.252" N, 074° 12'02.052" W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective Dates and Enforcement Periods*. This rule is effective from 8:00 a.m. on December 1, 2014 until 5:00 p.m. on October 31, 2018. This rule will be enforced upon notice by the Captain of the Port (COTP) New York or the COTP's designated representative.

(c) *Regulations*.

(1) The general regulations contained in §§ 165.10, 165.11, and 165.13 apply.

(2) In accordance with the general regulations, entry into, anchoring, or

movement within the RNA, during periods of enforcement, is prohibited unless authorized by the COTP or the COTP's designated representative.

(3) During periods of enforcement, entry and movement within the RNA is subject to a "Slow-No Wake" speed limit. Vessels may not produce more than a minimum wake and may not attain speeds greater than three knots unless a higher minimum speed is necessary to maintain steerageway when traveling with a strong current. In no case may the wake produced by the vessel be such that it creates a danger of injury to persons, or damage to vessels or structures of any kind.

(4) During periods of enforcement, upon being hailed by a Coast Guard vessel by siren, radio, flashing light or other means, the operator must proceed as directed.

(5) Vessel operators desiring to enter or operated within the regulated area when it is closed shall contact the COTP or the designated on-scene representative via VHF channel 16 or (718) 354-4353 (Sector New York Command Center) to obtain permission.

(6) Vessel Movement Reporting System (VMRS) users are prohibited from meeting or overtaking other vessels when transiting alongside an active work area where dredging and drilling equipment are being operated.

(7) Notwithstanding anything contained in this section, the Rules of the Road (33 CFR Chapter I, Subchapter E, part 83-90 inland navigation rules) are still in effect and must be strictly adhered to at all times.

Dated: March 25, 2014.

V.B. Gifford,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2014-08233 Filed 4-11-14; 8:45 am]

BILLING CODE 9110-04-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GN Docket Nos. 12-268, 13-185; WT Docket No. 05-211; DA 14-414]

Wireless Telecommunications Bureau Seeks Comment on Request for Clarification or Waiver of the Commission's Attributable Material Relationship Rule

AGENCY: Federal Communications Commission.

ACTION: Petition for clarification or waiver, comment requested.

SUMMARY: In this document, the Wireless Telecommunications Bureau

seeks comment on a request for clarification or waiver of the Commission's "attributable material relationship" rule.

DATES: Comments are due on or before April 25, 2014, and reply comments are due on or before May 9, 2014.

ADDRESSES: All filings in response to this notice must refer to GN Docket Nos. 12-268, 13-185 and WT Docket No. 05-211. The Wireless Telecommunications strongly encourages interested parties to file comments electronically using the Commission's Electronic Comment Filing System (ECFS). Comments may be submitted by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and five copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Attn: WT/ASAD, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. Parties should also send a copy of their filings to Kelly A. Quinn, by email to kelly.quinn@fcc.gov. Parties must also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY-B402, Washington, DC

20554, (202) 488-5300, or via email to fcc@bcpiweb.com.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* Kelly A. Quinn at (202) 418-7384 or kelly.quinn@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of a public notice released on March 27, 2014 by the Wireless Telecommunications Bureau, Federal Communications Commission. The complete text of the public notice, including all related Commission documents, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday

through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY-A257, Washington, DC 20554. The public notice also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, fax 202-488-5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. Copies of the public notice, the request for clarification and waiver that is the subject of the public notice and related documents also are available on the

Commission's Web site at: <http://www.fcc.gov/cgb/ecfs/>.

1. On March 4, 2014, Grain Management, LLC filed a request for clarification or waiver of the Commission's "attributable material relationship" rule, 47 CFR 1.2110(b)(3)(iv)(A).

2. The Wireless Telecommunications Bureau invites interested parties to file comments on the request.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2014-08183 Filed 4-11-14; 8:45 am]

BILLING CODE 6712-01-P

Notices

Federal Register

Vol. 79, No. 71

Monday, April 14, 2014

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.

AFRICAN DEVELOPMENT FOUNDATION

Public Quarterly Meeting of the Board of Directors

AGENCY: United States African Development Foundation.

ACTION: Notice of meeting.

SUMMARY: The US African Development Foundation (USADF) will hold its quarterly meeting of the Board of Directors to discuss the agency's programs and administration.

DATES: The meeting date is Wednesday, April 23rd, 2014, 9:00 a.m. to 11:30 a.m.

ADDRESSES: The meeting location is 1400 I Street Northwest, Suite #1000 (Main Conference Room), Washington, DC, 2005-2246.

FOR FURTHER INFORMATION CONTACT: Rabayah Akhter, 202-233-8811.

Authority: Pub. L. 96-533 (22 U.S.C. § 290h).

Dated: April 8, 2014.

Doris Mason Martin,
General Counsel.

[FR Doc. 2014-08344 Filed 4-11-14; 8:45 am]

BILLING CODE 6117-01-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS-2014-0003]

Notice of Meeting of the Agricultural Air Quality Task Force

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Department of Agriculture (USDA) Agricultural Air Quality Task Force (AAQTF) will meet to continue discussions on critical air quality issues in relation to agriculture. Special emphasis will be placed on

obtaining a greater understanding about the relationship between agricultural production and air quality. The meeting is open to the public, and a draft agenda is included in this notice.

DATES: The AAQTF meeting will convene Wednesday, April 30, 2014, from 8:00 a.m. to 5:00 p.m. MDT, and Thursday, May 1, 2014, from 8:00 a.m. to 2:00 p.m. MDT. A public comment period will be held on May 1.

Individuals wishing to make oral presentations should contact Greg Johnson at (503) 273-2424, or email: greg.johnson@por.usda.gov no later than April 10, 2014, and bring 35 copies of any material they would like distributed to the meeting.

Written material intended for AAQTF member consideration prior to the meeting must be received by Dr. Greg Johnson, Designated Federal Official, USDA, NRCS, 1201 Lloyd Boulevard, Suite 1000, Portland, Oregon 97232 no later than April 24, 2014.

ADDRESSES: The meeting will be held at the Oxford Suites Boise, 1426 South Entertainment Avenue, Boise, Idaho 83709; telephone: (208) 322-8000.

FOR FURTHER INFORMATION CONTACT: Questions and comments should be directed to Dr. Greg Johnson, Designated Federal Official, USDA, NRCS, 1201 Lloyd Boulevard, Suite 1000, Portland, Oregon 97232; telephone: (503) 273-2424; fax: (503) 273-2401; email: greg.johnson@por.usda.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information concerning AAQTF, including revisions to the meeting agenda that may occur after this **Federal Register** Notice is published, may be found at: www.nrcs.usda.gov/wps/portal/nrcs/detail/national/air/taskforce.

Draft Agenda

Meeting of the AAQTF

April 30-May 1, 2014

- A. Welcome remarks and introductions
- B. Review of AAQTF history and purpose
- C. USDA Climate Change Program Office update
- D. Update on agricultural air quality regulatory issues at EPA
- E. AAQTF strategies and goals for 2013-2015

F. AAQTF subcommittee formation and meetings

G. Updates from USDA agencies (FS, NRCS, NIFA, and ARS)

H. Selected agricultural air quality research presentations

I. Public input (time will be reserved, most likely on the second day, to receive public comments. Individual presentations will be limited to 5 minutes)

The timing of events in the agenda is subject to change to accommodate changing schedules of expected speakers or extended discussions.

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may provide oral presentations during the meeting. Persons wishing to make an oral presentation should notify Greg Johnson at (503) 273-2424 no later than April 10, 2014. Those wishing to distribute written materials at the meeting (in conjunction with spoken comments) must bring 35 copies of the materials with them. Written materials for distribution to AAQTF members prior to the meeting must be received by Dr. Johnson no later than April 24, 2014.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please contact Greg Johnson. USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternate means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2000 (voice and TDD).

Signed this 3rd day of April 2014, in Washington, DC.

Jason A. Weller,

Chief, Natural Resources Conservation Service.

[FR Doc. 2014-08229 Filed 4-11-14; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF AGRICULTURE**Rural Business-Cooperative Service****Notice of Funding Availability (NOFA) for Delta Health Care and Delta Regional Authority Grant Program**

AGENCY: Rural Business-Cooperative Service, USDA and Delta Regional Authority.

ACTION: Notice

SUMMARY: Rural Business-Cooperative Service (RBS), an agency of the United States Department of Agriculture, and Delta Regional Authority announce the availability of grant funds through the Delta Health Care Services Grant Program (DHCS) and Delta Regional Authority (DRA) to be competitively awarded. Pursuant to the Consolidated and Further Continuing Appropriations Acts, of 2013 and 2014, total funding for the DHCS grant is \$5,775,327, with a minimum grant amount of \$50,000. Total funding for the 2013 DRA is \$300,000. There is no minimum grant amount for DRA grants.

Each program has its own respective requirements as detailed in Section IV of this announcement.

DATES: You must submit completed applications for grants according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight no later than June 13, 2014 to be eligible for grant funding. Late or incomplete applications will not be eligible for grant funding.
- Electronic copies must be received by June 13, 2014 to be eligible for grant funding. Late or incomplete applications will not be eligible for grant funding.

ADDRESSES: You may obtain application guides and materials for this Notice following ways:

- The Internet at the RBS Cooperative Programs Web site: http://www.rurdev.usda.gov/bcp_delta/healthcare.html
- You may also request application guides and materials from RBS by contacting, RBS Office of the Deputy Administrator, Cooperative Programs at (202) 690-1374 or your local State Office. A list of State Office contacts can be found at <http://www.rurdev.usda.gov/StateOfficeAddresses.html>.

Alabama

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106-3683, (334) 279-3400/TDD (334) 279-3495.

Arkansas

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201-3225, (501) 301-3200/TDD (501) 301-3279.

Illinois

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403-6200/TDD (217) 403-6240.

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224-7300/TDD (859) 224-7422.

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473-7921/TDD (318) 473-7655.

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965-4316/TDD (601) 965-5850.

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876-0976/TDD (573) 876-9480.

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203-1084, (615) 783-1300.

You must submit either:

- Completed paper applications for both DHCS and DRA grants to the Office of the Deputy Administrator, Cooperative Programs, Rural Business-Cooperative Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 4016, STOP 3250, Washington, DC 20250-3250, or
- Electronic grant applications for both DHCS and DRA grants at [http://www.grants.gov/\(Grants.gov\)](http://www.grants.gov/(Grants.gov)), following the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT:

Office of the Deputy Administrator, Cooperative Programs, Rural Business-Cooperative Programs, 1400 Independence Ave., SW., Room 4016, STOP 3250, Washington, DC 20250-3250; telephone: (202) 720-8460, fax: (202) 690-2724.

Visit the program Web site at http://www.rurdev.usda.gov/BCP_delta/healthcare.html for application assistance for either program, or contact

your USDA Rural Development State Office at http://www.rurdev.usda.gov/recd_map.html. Applicants are encouraged to contact their State Offices in advance of the deadline to discuss their projects and ask any questions about the application process.

EO 13175 Consultations 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 this notice 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, this notice 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.

Paperwork Reduction Act

The Paperwork Reduction Act requires Federal agencies to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the agency conducted an analysis to determine the number of eligible applications the Agency estimates that it will receive under the Delta Health Care Services Grant Program. It was determined that the estimated number of eligible applications was fewer than nine and in accordance with 5 CFR 1320, no OMB approval is necessary at this time.

SUPPLEMENTARY INFORMATION:**Overview**

Federal Agency: Rural Business-Cooperative Service (RBS) and Delta Regional Authority.

Funding Opportunity Title: Delta Health Care & Delta Regional Authority Grant Program.

Announcement Type: Funding announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.874 Delta Health Care Services Grant Program

10.773 Delta Regional Authority
Dates: The due date for application submissions is June 13, 2014:

- Paper copies must be postmarked and mailed, shipped, or sent overnight

no later than June 13, 2014 to be eligible for grant funding. Late or incomplete applications will not be eligible for grant funding.

- Electronic copies must be received by June 13, 2014 to be eligible for grant funding. Late or incomplete applications will not be eligible for grant funding.

I. Funding Opportunity

This funding opportunity announces the availability of funds for the Delta Health Care Services (DHCS) and Delta Regional Authority (DRA) grant programs. The DHCS grant program is authorized under Section 379G of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008u). The DRA grant program is authorized under Sections 382A and 382B of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009aa and 2009aa-1). Both grant programs provide direct financial assistance to support the rural communities within the Delta Region. The purpose of this joint solicitation is to ensure a streamlined process for eligible applicants to leverage both programs while also strengthening the partnership between USDA and DRA in coordinating the assistance to the Delta Region and the management and monitoring of these awards.

The available funding for the DRA grant program is primarily for the purposes of assisting in the economic development of rural areas in the Delta Region by providing technical assistance for health care related business and economic development planning.

The DHCS grant program is designed to provide financial assistance to address the continued unmet health needs in the Delta Region through cooperation among health care professionals, institutions of higher education, research institutions, and other individuals and entities in the Delta Region. DHCS grant funds may be used for the development of health care services; health education programs, health care job training programs; and for the development and expansion of public health-related facilities in the rural Delta Region.

Grants will be awarded to eligible entities in the Delta Region serving communities of no more than 50,000 inhabitants.

II. Definitions

The terms and conditions provided in this Notice are applicable to and for purposes of this Notice only.

Academic Health and Research Institute consists of a medical school,

one or more other health profession schools or programs (such as allied health, dentistry, graduate studies, nursing, pharmacy, public health, veterinary medicine), and one or more owned or affiliated teaching hospitals or health systems.

Consortium means a group of at least three entities that are regional institutions of higher education, academic health and research institutes, and economic development entities located in the Delta Region that have experience in addressing the health care issues in the region. At least one of the consortium members must be legally organized as an incorporated organization or other legal entity and have legal authority to contract with the Government.

Delta Region means the 252 counties and parishes within the states of Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee that are served by the Delta Regional Authority. (The Delta Region may be adjusted by future Federal statute.) To view the areas identified within the Delta Region visit <http://www.dra.gov/about-us/eight-state-map.aspx>.

Economic Development Entity means any public or non-profit organization whose primary mission is to stimulate local and regional economies within the Delta Region by increasing employment opportunities and duration of employment, expanding or retaining existing employers, increasing labor rates or wage levels, reducing outmigration, and/or creating gains in other economic development-related variables such as land values. These activities shall primarily benefit low- and moderate-income individuals in the Delta Region.

Health Care Cooperative means a health care system/organization owned and democratically controlled by the people who use its services and whose benefits are derived and distributed equitably on the basis of use.

Institution of Higher Education means either a postsecondary (post-high school) educational institution that awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or a postsecondary vocational institution that provides a program of training to prepare students for gainful employment in a recognized occupation.

Rural area means any area of the United States not included within (a) the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 50,000 inhabitants and (b) any urbanized area

contiguous and adjacent to a city or town described in clause (a).

RBS (referred to as the Agency) means Rural Business-Cooperative Service, an agency under the mission of Rural Development which is under the United States Department of Agriculture.

Technical Assistance means a non-construction, problem-solving activity performed for the benefit of a business or community to assist in the economic development of a rural area. The Agency will determine whether a specific activity qualifies as technical assistance.

III. Award Information

Type of Award: Grant
Total Funding for DHCS: \$5,775,327
Maximum DHCS Award: \$1,000,000
Minimum DHCS Award: \$50,000
Total Funding for DRA: \$300,000
Maximum DRA Award: \$100,000
Minimum DRA Award: N/A

Period of Performance:

All grant funds for both DHCS and DRA programs are limited to a 2-year performance period. This deadline can be extended for up to one year if necessary, but only in unusual circumstances.

In order to request a period of performance extension, the grantee must submit a formal written request no later than 60 days prior to the expiration of the period of performance and must include a compelling justification. This justification must also demonstrate that work is in progress and that it can be completed within the extended period of performance. After reviewing the justification, the Agency, at its discretion, may extend the period of performance by 1-year if it is determined that unusual circumstances exist.

The Agency will make awards and execute documents appropriate to the project prior to any advance of funds to successful applicants.

IV. Eligibility Information

An applicant must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number (see Section IV.B.) and register in the System for Award Management (SAM), formerly Central Contractor Registry (CCR), prior to submitting an application. (See 2 CFR 25.200(b).) In addition, an applicant must maintain its registration in the SAM database during the time its application is active. Finally, an applicant must have the necessary processes and systems in place to comply with the reporting requirements in 2 CFR 170.200(b), as long as it is not exempted from reporting. Exemptions are identified at 2 CFR 170.110(b).

A. Eligible Applicants

DHCS and DRA grant programs have their own respective authorities and requirements. Eligible applicants may apply for one or both programs as long as proposed projects specifically comply with the following eligibility requirements.

DHCS: Grants funded through DHCS may be made to a Health Care Cooperative or a Consortium, as defined

in Section II of this Notice. The Health Care Cooperative must be legally organized and have authority to contract with the Federal Government. To apply as a Consortium, at least one member of the Consortium must be legally organized as an incorporated organization, or other legal entity, and have legal authority to contract with the Federal Government. The Consortium must be located in the Delta Region and must include at least three entities that

are regional institutions of higher education, academic health and research institutes, or economic development entities.

DRA: DRA funds may be made to public bodies, regional institutions of higher education, nonprofit corporations, Indian tribes on Federal or State reservations and other federally recognized tribal groups, and cooperatives within the Delta Region.

TABLE 1—SUMMARY OF APPLICANT ELIGIBILITY

Eligible Applicants	DHCS	DRA
1. Consortium of	✓
Regional Institutions of Higher Education	✓	✓
Academic Health and Research Institute	✓
Economic Development Entities	✓
2. Public Bodies (towns, communities, State agencies and authorities)	✓
3. Nonprofit Corporations	✓
4. Indian Tribes	✓
5. Health Care Cooperatives	✓	✓

B. Eligible Activities

DRA grant funds may be used to assist in the economic development of rural areas by providing technical assistance for business development and economic development planning.

DHCS grant funds may be utilized for the development of health care services, health education programs, health care job training programs, and for the development and expansion of public health-related facilities in the Delta Region. Grants will be awarded to

eligible entities in the Delta Region serving communities of no more than 50,000 inhabitants to help to address the long standing and unmet health needs of the region. Awardees will be selected through a merit-based interagency grant process.

TABLE 2—SUMMARY OF ELIGIBLE GRANT PURPOSES

Eligible Purposes	DHCS	DRA
Planning	✓
Technical Assistance	✓
Health Care Job Training	✓	✓
Health Care Service Development	✓
Health Education Program Development	✓
Development and/or Expansion of Public Health Related Facility	✓

Note: If you are an eligible applicant for both DHCS and DRA grant programs (i.e. regional institutions of higher education and rural cooperatives), you may propose funding for both programs as long as proposals for each program are distinctly different. For example, DRA funds may be used to assist in the planning and creation of a new nurse training institute, while DHCS funds may be used for implementing the health care services carried out by the nurses. This would require one scope of work for each program.

C. Cost Sharing or Matching

Matching funds are not required.

D. Other Eligibility Requirements

An application must propose to use project funds, including grant and other contributions committed under the evaluation criteria for eligible purposes. Also, for the DHCS Program the Consortium must be located in the Delta

Region and the project must serve, and grant funds must be expended, in rural areas as defined in Section II of this Notice, within the Delta Region. However, the applicant need not propose to serve the entire Delta Region.

DRA funds cannot be used for construction, planning a facility, engineering work, or revolving loan funds. However, if you include funds in your budget that are for ineligible purposes, we will consider the application for funding if the ineligible purposes total 10 percent or less of an applicant's total project budget. However, if the application is successful, those ineligible costs must be removed before we will make the grant award. If we cannot determine the percentage of ineligible costs, the application will not be considered for funding.

The following additional applicant eligibility requirements apply to both programs:

1. Individuals are not eligible to apply.
 2. The applicant must be able to demonstrate at least 1 year of prior experience in addressing the health care issues in the Delta Region.
 3. If the applicant has an existing DHCS and/or DRA award, you must be performing satisfactorily to be considered eligible for a new award. Satisfactory performance includes, but is not limited to, being up-to-date on all financial and performance reports and being current on all tasks as approved in the work plan. The Agency will consider a one-time request to extend the period for up to 1 year during which grant funding is available.
- Awards made under this Notice are subject to the provisions contained in

the Consolidated and Further Continuing Appropriations Act, 2013, Pub.L. 113–6, sections 732 and 733 regarding corporate felony convictions and corporate federal tax delinquencies. You must provide representation as to whether your organization or any officers or agents of your organization has or has not been convicted of a felony criminal violation under Federal or State law in the 24 months preceding the date of application. In addition, you must provide representation as to whether your organization has or does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. To comply with these provisions, all applicants must complete paragraph (A) of this representation, and all corporate applicants also must complete paragraphs (B) and (C) of this representation:

(A) Applicant _____ [insert applicant name] is ___ not ___ (check one) and entity that has filed articles of incorporation in one of the fifty states, the District of Columbia, or the various territories of the United States including American Samoa, Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, U.S. Virgin Islands.

(B) Applicant _____ [insert applicant name] ___ has ___ has not ___ (check one) been convicted of a felony criminal violation under Federal or state law in the 24 months preceding the date of application. Applicant has ___ has not ___ (check one) had any officer or agent of the Applicant convicted of a felony criminal violation for actions taken on behalf of the Applicant under Federal or State law in the 24 months preceding the date of the signature on the pre-application.

(C) Applicant _____ [insert applicant name] has ___ does not have ___ (check one) any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

a. Indirect Costs

In accordance with Section 704 of Consolidated and Further Continuing Appropriations Act, 2013, the total amount for salaries and wages,

administrative expenses, and recurring operating costs may not exceed 10 percent of the grant.

b. Environmental and Engineering Requirements

For proposals including construction under the DHCS program, this additional requirement applies. The applicant must provide details of the project's impact on the environment and historic preservation, and comply with 7 CFR part 1940, which contains the Agency's policies and procedures for implementing a variety of Federal statutes, regulations, and executive orders generally pertaining to the protection of the quality of the human environment. This must be contained in a separate section entitled "Environmental Impact of the Project" and must include the Environmental Questionnaire/Certification describing the impact of the project. The Environmental Questionnaire/Certification is available on the RBS Cooperative Programs Web site at: http://www.rurdev.usda.gov/bcp_delta_healthcare.html. Submission of the Environmental Questionnaire/Certification alone does not constitute compliance with 7 CFR part 1940.

Applications for technical assistance or planning projects are generally excluded from the environmental review process by 7 CFR 1940.333.

c. Funding Restrictions

Grant funds may not be used to:

1. Duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or a service beyond what is currently being provided;
2. Pay costs to prepare the application for funding under this program;
3. Pay costs of the project incurred prior to the effective date of the grant period;
4. Fund political activities;
5. Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence; or
6. Pay any judgment or debt owed to the United States. Any delinquent debt to the Federal Government shall cause the applicant to be ineligible to receive funds until the debt has been paid.

E. Completeness Eligibility

Your application will not be considered for funding if it does not provide sufficient information to

determine eligibility or is missing required elements. In particular, you must include a project budget that identifies each task to be performed, along with the period of performance for each task, and the amounts of grant funds and other contributions needed for each task.

V. Application and Submission Information

Only one application is required per eligible applicant whether applying for only one program or both. Please see instructions below on how to access and submit a complete application for this funding opportunity.

A. Where to get Application Information

The application guide and copies of necessary forms for the DHCS and DRA Grant Programs are available from these sources:

- The Internet at http://www.rurdev.usda.gov/bcp_deltahealthcare.html
- <http://www.grants.gov>, or
- For paper copies of these materials: call (202) 690–1374.

B. How and Where To Submit an Application

You may file an application in either paper or electronic format. To submit your application electronically you must use the Grants.gov Web site at <http://www.grants.gov>. You may not submit an application electronically in any way other than through Grants.gov. Fax or email applications will not be accepted.

Whether you file a paper or an electronic application, you will need a DUNS number.

1. DUNS Number

As required by the OMB, all applicants for grants must supply a DUNS number when applying. The Standard Form 424 (SF–424) contains a field for you to use when supplying your DUNS number. A DUNS number can be obtained at no cost by visiting <http://fedgov.dnb.com/webform> or calling toll-free (866) 705–5711.

2. System for Award Management (SAM)

(a) In accordance with 2 CFR part 25, applicants, whether applying electronically or by paper, must be registered in SAM prior to submitting an application. Applicants may register with SAM at <https://www.sam.gov> or by calling 1–(866) 606–8220. Completing the SAM registration process takes up to five business days, and applicants are strongly encouraged to begin the process well in advance of the deadline specified in this Notice.

(b) The SAM registration must remain active, with current information, at all times during which an entity has an application under consideration by an agency or has an active Federal Award. To remain registered in the SAM database after the initial registration, the applicant is required to review and update, on an annual basis from the date of initial registration or subsequent updates, its information in the SAM database to ensure it is current, accurate and complete.

For paper applications, send or deliver the applications by the U.S. Postal Service (USPS) or courier delivery services to the RBS receipt point set forth below. The Agency will not accept applications by fax or email. Original paper application (no stamped, photocopied, or initialed signatures) and one copy must be postmarked by June 13, 2014, to the following address: Office of the Deputy Administrator, Cooperative Programs, Rural Business-Cooperative Service, 1400 Independence Avenue, SW., STOP 3250, Room 4016, Washington, DC 20250-3250.

C. Submission Date and Time

Application Deadline date: June 13, 2014.

Explanation of Deadlines: Complete paper applications must be postmarked by June 13, 2014. Electronic applications submitted through Grants.gov will be accepted by the system through midnight eastern time on the deadline date.

D. Completed Application Requirements

1. Detailed information on each item required can be found in the DHCS/DRA Grant Program application guide http://www.rurdev.usda.gov/bcp_deltahealthcare.html. The program's application guide provides specific guidance on each of the items listed and also provides all necessary forms and sample worksheets.

2. Applications should be prepared in conformance with applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019, as applicable. A completed application must include the following:

a. *An Application for Federal Assistance.* A completed SF-424.

b. *Evidence of eligibility.* Evidence of the applicant's eligibility to apply under this Notice. If the applicant is applying as a consortium, additional evidence that the applicant is a consortium as defined in this Notice.

c. *A project abstract.* A summary not to exceed one page, suitable for dissemination to the public and to Congress.

d. *Executive summary.* An executive summary of the project describing its purpose, not to exceed two pages.

e. *Scoring documentation.* The grant applicant must address and provide documentation on how it meets each of the scoring criteria, specifically the rurality of the project area and communities served, the community needs and benefits derived from the project, and project management and organization capability.

f. *Service area maps.* Maps with sufficient detail to show the area that will benefit from the proposed facilities and services, and the location of facilities purchased with grant funds.

g. *Scope of work.* The scope of work must include (1) the specific activities and services, such as programs and training, to be performed under the project, (2) the facilities to be purchased or constructed, (3) who will carry out the activities and services, (4) specific time frames for completion and (5) documentation regarding how the applicant solicited input for the project from local governments, public health care providers, and other entities in the Delta Region.

h. *Written narrative.* The narrative should include at minimum the following items: (1) an explanation of why the project is needed, the benefits of the proposed project, and how the project meets the grant selection criteria; (2) business to be assisted, if appropriate and economic development activities within the project area; and (3) an explanation of how the proposed project will result in increased or saved jobs in the area and the number of projected new and saved jobs, not to exceed 10 pages.

i. *Budget.* The applicant must provide a budget showing the line item costs for all capital and operating expenditures eligible for the grant funds, and other sources of funds necessary to complete the project.

j. *Financial information and sustainability.* The applicant must provide current financial statements and a narrative description demonstrating sustainability of the project, all of which show sufficient resources and expertise to undertake and complete the project and how the project will be sustained following completion.

k. *Statement of experience.* The applicant must provide a written narrative describing its demonstrated capability and experience in addressing the health care issues in the Delta Region and in managing and operating a project similar to the proposed project.

l. *Evidence of legal authority and existence.* At least one member of the Cooperative/Consortium must provide

evidence of its legal existence and authority to enter into a grant agreement with the Agency and perform the activities proposed under the grant application.

m. *Acknowledgment from Consortiums.* Each application from a consortium must include an acknowledgement from each member of the Consortium that it is a member of the Consortium. This acknowledgement must be on each entity's letterhead and signed by an authorized representative of the entity.

E. Additional Requirements by Program

The applicant must provide evidence or certification that it is in compliance with all applicable Federal statutes and regulations including, but not limited to, the following (sample certifications are provided in the application guide):

- Equal Opportunity and Nondiscrimination
- Drug-Free Workplace Act of 1998 (41 U.S.C. 701 *et seq.*);
- Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions
- Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction"
- Form AD-1049, "Certification Regarding a Drug-Free Workplace Requirement (Grants)
- Lobbying for Contracts, Grants, Loans, and Cooperative Agreements (31 U.S.C. 1352)

There are additional environmental requirements for proposals including construction under the DHCS program. The applicant must provide details of the project's impact on the environment and historic preservation and comply with 7 CFR part 1940, which contains the Agency's policies and procedures for implementing a variety of Federal statutes, regulations, and executive orders generally pertaining to the protection of the quality of the human environment. This must be contained in a separate section entitled "Environmental Impact of the Project" and must include the Environmental Questionnaire/Certification describing the impact of the project. The Environmental Questionnaire/Certification is available on the RBS Cooperative Programs Web site at: http://www.rurdev.usda.gov/bcp_deltahealthcare.html. Submission of the Environmental Questionnaire/Certification alone does not constitute compliance with 7 CFR part 1940.

Applications for technical assistance or planning projects are generally

excluded from the environmental review process by 7 CFR 1940.333.

VI. Application Review Information

A. Criteria

Grant applications are scored competitively and subject to the criteria listed below. Grant application scoring criteria are detailed in the DHCS and DRA Grant Application Guide which can be found at http://www.rurdev.usda.gov/BCP_DeltaHealthCare.html. There are four criteria that when totaled together can add up to a total of 100 points, broken down as follows:

1. Rurality of the project area and communities served—Up to 15 Points
2. Other Contributions—Up to 15 points
3. Community needs and benefits derived from the project—Up to 30 Points
4. Project management and organization capability—Up to 40 points

B. Grant Review Standards

1. All applications for grants must be delivered to RBS at the address specified in this Notice, or submitted electronically to <http://www.grants.gov/> (*Grants.gov*) to be eligible for funding. The Agency will review each application for conformance with the provisions of this Notice. The Agency may contact the applicant for additional information or clarification.

2. We will review each application to determine if it is eligible for assistance based on the requirements of this Notice as well as other applicable Federal regulations.

3. Applications conforming with this Notice will be evaluated competitively by the Agency, and will be awarded points in accordance with this Notice. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

C. Scoring Guidelines

The Agency will review each application to determine if it is eligible for assistance based on the requirements of this Notice, as well as other applicable Federal regulations.

Applications conforming with this Notice will be evaluated competitively by the Agency and will be awarded points as described in the DHCS/DRA Grant Application Guide. Applications will be ranked and grants awarded in rank order until all grant funds are expended. The applicant must address each selection criterion outlined in this Notice. Any criterion not substantively addressed will receive zero points. The Agency may contact the applicant for additional information or clarification.

1. The applicant's rurality calculation will be checked and, if necessary, corrected by the Agency.

2. The Other Contributions score will be calculated based on documentation provided indicating who will be providing the other source of funds, the amount of funds, when those funds will be provided, and how the funds will be used in the project budget. The Agency will assess how well the applicant intends to leverage the use of additional contributions to extend the scope of the project.

3. The Community Needs and Benefits derived from the project score will be determined by the Agency based on information presented in the application. The Community Needs and Benefits score is a subjective score based on the reviewer's assessment of the supporting arguments made in the application. The score aims to assess how the project's purpose and goals benefit the residents in the Delta Region.

4. The Project Management and Organization Capability score will be determined by the Agency based on information presented in the application. The Agency will evaluate the applicant's experience, past performance, and accomplishments addressing health care issues to ensure effective project implementation.

D. Selection Process

Grant applications are ranked by final score. The Agency selects applications based on those rankings, subject to availability of funds. Rural Development has the authority to limit the number of applications selected in any one state, or from any applicant.

VII. Award Administration Information

A. Award Notices

The Agency recognizes that each funded project is unique, and therefore may attach conditions to different projects' award documents. The Agency generally notifies applicants whose projects are selected for awards by faxing an award letter. The Agency follows the award letter with a grant agreement that contains all the terms and conditions for the grant. An applicant must execute and return the grant agreement, accompanied by any additional items required by the grant agreement. If the application is not successful, the applicant will receive notification, including mediation procedures and appeal rights, by mail.

All adverse determinations regarding applicant eligibility and the awarding of points as part of the selection process are appealable to the National Appeals Division, USDA (see 7 CFR part 11).

Instructions on the appeal process will be provided at the time an applicant is notified of the adverse decision.

B. Administrative and National Policy Requirements

All recipients of Federal financial assistance are required to comply with the Federal Funding Accountability and Transparency Act of 2006 and must report information about sub-awards and executive compensation (see 2 CFR part 170). These recipients must also maintain their registration in the SAM database as long as their grants are active. These regulations may be obtained at <http://www.gpoaccess.gov/cfr/index.html>.

The following additional requirements apply to grantees selected for this program:

- Agency-approved Grant Agreement.
- Letter of Conditions.
- Form RD 1940-1, "Request for Obligation of Funds."
- Form RD 1942-46, "Letter of Intent to Meet Conditions."
- Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions."
- Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions."
- Form AD-1049, "Certification Regarding a Drug-Free Workplace Requirement (Grants)."
- Form AD-3031, "Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants."
- Form RD 400-4, "Assurance Agreement."
- SF-LLL, "Disclosure of Lobbying Activities" if applicable.
- 7 CFR parts 3015, 3016, 3019, and 3052, as applicable.

In addition to specific grant requirements, all approved applicants will be required to do the following:

1. Use Form SF-270 "Request for Advance or Reimbursement" to request advances or reimbursements, as applicable, but not more frequently than once a month;
2. Maintain a financial management system that is acceptable to the Agency; and
3. Collect and maintain data on race, sex, and national origin of the beneficiaries of the project.

C. Reporting Requirements

1. Federal Financial Reports

An SF-425, "Federal Financial Report," must be submitted listing expenditures according to agreed upon

budget categories, on a semiannual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

2. Performance Reports

Semiannual performance reports should compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reports are due as provided in paragraph C1 of this section. The supporting documentation for completed tasks include, but are not limited to, feasibility studies, marketing plans, business plans, articles of incorporation and bylaws, and an accounting of how working capital funds were spent.

3. Subrecipient Reporting

The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

1. First Tier Sub-Awards of \$25,000 or more in non-Recovery Act funds (unless they are exempt under 2 CFR part 170) must be reported by the Recipient to <http://www.fsrs.gov> no later than the end of the month following the month the obligation was made.

2. The Total Compensation of the Recipient's Executives (five most highly compensated executives) must be reported by the Recipient (if the Recipient meets the criteria under 2 CFR part 170) to <http://www.sam.gov> by the end of the month following the month in which the award was made.

3. The Total Compensation of the Subrecipient's Executives (five most highly compensated executives) must be reported by the Subrecipient (if the Subrecipient meets the criteria under 2 CFR part 170) to the Recipient by the end of the month following the month in which the sub-award was made. Further details regarding these

requirements can be obtained at <http://www.gpoaccess.gov/cfr/index.html>.

4. Final Reports

The final project performance report, inclusive of supporting documentation, is due within 90 days of the completion of the project.

5. Closeout

Grant closeout activities include a letter to the grantee with final instructions and reminders for amounts to be de-obligated for any unexpended grant funds, final project performance reports due, submission of outstanding deliverables, audit requirements, or other outstanding items of closure.

VIII. Agency Contacts

A. Web site: http://www.rurdev.usda.gov/bcp_deltahealthcare.html. The Web site maintains up-to-date resources and contact information for the DHCS/DRA Grant Programs.

B. Phone: (202) 720-8460.

C. Fax: (202) 690-2724.

D. Email:

RD.DeltaHealth@wdc.usda.gov.

E. Web site: http://www.rurdev.usda.gov/bcp_deltahealthcare.html.

D. Main point of contact: Deputy Administrator, Cooperative Programs, RBS.

IX. Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720-2600 (voice and TDD).

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF) found online at http://www.ascr.usda.gov/complain_filing_cust.html or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of

Adjudication, 1400 Independence Avenue SW., Washington, DC 20250-9410, by fax (202) 690-7442, or email at program.intake@usda.gov.

Individuals who are deaf, hard of hearing, or have speech disabilities and who wish to file either an EEO or program complaint, please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish).

Persons with disabilities who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.), please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Dated: April 3, 2014.

Lillian Salerno,

Acting Administrator, Rural Business-Cooperative Programs.

[FR Doc. 2014-08363 Filed 4-11-14; 8:45 am]

BILLING CODE 3410-XY-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service, an agency delivering the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs, invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by June 13, 2014.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Utilities Service, 1400 Independence Ave. SW., STOP 1522, Room 5162 South Building, Washington, DC 20250-1522. Telephone: (202) 690-1078. Email: Michele.Brooks@wdc.usda.gov. FAX: (202) 720-4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) requires that interested members of the public and affected agencies have an

opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that will be submitted to OMB for approval.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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 may be sent to: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Utilities Service, STOP 1522, 1400 Independence Ave. SW., Washington, DC 20250-1522. Email: Michele.Brooks@wdc.usda.gov. FAX: (202) 720-4120.

Title: 7 CFR part 1738, Rural Broadband Loans and Loan Guarantee Program.

OMB Control Number: 0572-0130.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Utilities Service (RUS) is authorized by Title VI, Rural Broadband Access, of the Rural Electrification Act of 1936, as amended (RE Act), to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities in States and Territories of the United States. The term of the loans is based on the expected composite economic life based on the depreciation of the facilities financed. The term of the loan can be as high as 25 years or even longer. In the interest of protecting loan security and accomplishing the statutory objective of a sound program of rural broadband service access, Title VI of the RE Act requires that RUS make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the borrower will be repaid in full within the time agreed. The items covered by this collection include forms and related documentation to support a loan application, including Form 532 and supporting documentation.

Estimate of Burden: Public reporting for this collection of information is estimated to average 225 hours per response.

Respondents: Businesses and Not-for-profit institutions.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 10,544.50 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720-7853. FAX: (202) 720-4120. Email: MaryPat.Daskal@wdc.usda.gov.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 2, 2014.

John Charles Padalino,
Administrator, Rural Utilities Service.

[FR Doc. 2014-08309 Filed 4-11-14; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Atlantic Highly Migratory Species Voluntary Release Reports.

OMB Control Number: 0648-0628.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 13.

Average Hours per Response: 5 minutes.

Burden Hours: 1.

Needs and Uses: This request is for an extension of a currently approved information collection.

Under the Magnuson-Stevens Fishery Conservation and Management Act (MSFMCA, 16 U.S.C. 1801 et seq.) the National Marine Fisheries Service (NMFS) is to ensure that conservation and management measures promote, to the extent practicable, implementation of scientific research programs that include the tagging and releasing of Atlantic highly migratory species (HMS). The currently approved

information collection allows the public to submit volunteered geographic and biological information relating to HMS releases in order to populate an interactive Web site mapping tool. This Web page attracts visitors who are interested in Atlantic HMS and contains information and links to promote HMS tagging programs that the general public can support or become involved with. All submissions are voluntary. Information is used to raise awareness for releasing Atlantic HMS and HMS tagging programs, and is not used as representative results.

Affected Public: Individuals or households; business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA_Submission@omb.eop.gov or fax to (202) 395-5806.

Dated: April 8, 2014

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014-08224 Filed 4-11-14; 8:45 am]

BILLING CODE 3510-JE-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD220

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Mackerel-Squid-Butterfish (MSB) Monitoring Committee will meet twice via webinar to develop recommendations for future MSB specifications.

DATES: The first meeting will be Tuesday May 13, 2014, starting at 9 a.m. and ending by 11 a.m. The second meeting will be Tuesday May 27, 2014, starting at 9 a.m. and ending by 1 p.m.

ADDRESSES: The meetings will be held via webinar, but anyone can also attend at the Council office address (see below). The webinar link is: <http://mafmc.adobeconnect.com/msbmc2015specs/>. Please call the Council in advance if you wish to attend at the Council office.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331.

FOR FURTHER INFORMATION CONTACT:

Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526-5255.

SUPPLEMENTARY INFORMATION: The Council's Mackerel-Squid-Butterfish (MSB) Monitoring Committee will meet twice to develop recommendations for future MSB specifications. The first meeting will focus on reviewing the available information and plan any additionally needed analyses. The second meeting will focus on finalizing recommendations for the Council. There will be time for public questions and comments at both meetings. The Council utilizes the Monitoring Committee recommendations at each June Council meeting when setting the subsequent years' MSB specifications.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations:

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids or assistance should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526-5251, at least 5 days prior to the meeting date.

Dated: April 9, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014-08323 Filed 4-11-14; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD036

Marine Mammals; File No. 16591

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Darlene Ketten, Ph.D., Woods Hole Oceanographic Institution, 266 Woods Hole Road, Woods Hole, MA 02543, to collect, import, export, and receive marine mammal parts for scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office: Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427-8401; fax (301) 713-0376.

FOR FURTHER INFORMATION CONTACT:

Amy Sloan or Jennifer Skidmore, (301) 427-8401.

SUPPLEMENTARY INFORMATION: On January 17, 2014, notice was published in the *Federal Register* (79 FR 3180) that a request for a permit to conduct research on marine mammals parts had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The permit authorizes Dr. Ketten to annually collect, receive, import and export biological samples from 20 individual cetaceans and 20 individual pinnipeds of each species under NMFS jurisdiction. The purpose of the research is to study marine mammal hearing including calculating hearing frequency distributions, determining how marine mammal ears withstand pressure changes, and understanding how underwater noise affects marine mammal hearing. No takes of live animals, direct or indirect, are

authorized by the permit. The permit expires on February 28, 2019.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 8, 2014.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014-08349 Filed 4-11-14; 8:45 am]

BILLING CODE 3510-22-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB-2014-0007]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is proposing a new Generic Information Collection Plan titled, "CFPB Generic Information Collection Plan for Studies of Consumers using Controlled Trials in Field and Economic Laboratory Settings."

DATES: Written comments are encouraged and must be received on or before June 13, 2014 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail/Hand Delivery/Courier:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.

Please note that comments submitted by fax or email and those submitted after the comment period will not be

accepted. In general, all comments received will be posted without change to regulations.gov, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at www.regulations.gov. Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435-9575, or email: PRA@cfpb.gov. Please do not submit comments to this mailbox.

SUPPLEMENTARY INFORMATION:

Title of Collection: CFPB Generic Information Collection Plan for Studies of Consumers using Controlled Trials in Field and Economic Laboratory Settings.
OMB Control Number: 3170-XXXX.

Type of Review: New Collection (request for a new OMB control number).

Affected Public: Individuals and households.

Estimated Number of Respondents: 26,100.

Estimated Total Burden Hours: 34,200.

Abstract: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Consumer Financial Protection Bureau is tasked with researching, analyzing, and reporting on topics relating to the Bureau's mission, including developments in markets for consumer financial products and services, consumer awareness, and consumer behavior. The Bureau seeks to obtain approval for a generic clearance to collect data from purposive samples through controlled trials in field and economic laboratory settings. This research will be used for developmental and informative purposes in order to increase the Bureau's understanding of consumer credit markets and household financial decision-making.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: April 1, 2014.

Ashwin Vasan,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2014-08266 Filed 4-11-14; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Defense Advisory Committee on Military Personnel Testing. This meeting is open to the public.

DATES: Thursday, May 8, 2014, from 9:00 a.m. to 4:00 p.m. and Friday, May 9, 2014, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: The Galt House, 140 North Fourth Street, Louisville, Kentucky, 40202.

FOR FURTHER INFORMATION CONTACT: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 3D1066, The Pentagon, Washington, DC 20301-4000, telephone (703) 697-9271.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150.

Purpose of the Meeting: The purpose of the meeting is to review planned changes and progress in developing computerized tests for military enlistment screening.

Agenda: The agenda includes an overview of current enlistment test development timelines, test development strategies, and planned research for the next 3 years.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and the

availability of space, this meeting is open to the public.

Committee's Designated Federal Officer or Point of Contact: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 3D1066, The Pentagon, Washington, DC 20301-4000, telephone (703) 697-9271.

Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number in **FOR FURTHER INFORMATION CONTACT** no later than April 25, 2014.

Dated: April 8, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014-08279 Filed 4-11-14; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Advisory Committee on Arlington National Cemetery (ACANC). The meeting is open to the public. For more information about the Committee, please visit <http://www.arlingtoncemetery.mil/AboutUs/FocusAreas.aspx>.

DATES: The Committee will meet from 9:30 a.m.-3:30 p.m. on Tuesday, May 7, 2014.

ADDRESSES: Women in Military Service for America Memorial, Conference Room, Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Ms. Renea C. Yates; Designated Federal Officer for the Committee, in writing at Arlington National Cemetery, Arlington VA 22211, or by email at renea.c.yates.civ@mail.mil, or by phone at 703-614-1248.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of 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 102–3.150).

Purpose of the Meeting: The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the Committee's advice and recommendations.

Proposed Agenda: The Committee will receive updates on the ANC Master Plan, major construction and expansion projects, and the plan for ANC 150th commemoration events. It will also review the current burial eligibility and military honors wait times, and the impact of such wait times; memorial monument requests; and possible technology uses to enhance families' abilities to perpetually commemorate their loved ones.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Women in Military Service for America is readily accessible to and usable by persons with disabilities. For additional information about public access procedures, contact Ms. Renea Yates, the Committee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Committee, in response to the stated agenda of the open meeting or in regard to the Committee's mission in general. Written comments or statements should be submitted to Ms. Renea Yates, the Committee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the Committee. The

Designated Federal Officer will review all timely submitted written comments or statements with the Committee Chairperson, and ensure the comments are provided to all members of the Committee before the meeting. Written comments or statements received after this date may not be provided to the Committee until its next meeting. Pursuant to 41 CFR 102–3.140(d), the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) days in advance to the Committee's Designated Federal Official, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The Designated Federal Official will log each request, in the order received, and in consultation with the Committee Chair determine whether the subject matter of each comment is relevant to the Committee's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the Designated Federal Official.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–08330 Filed 4–11–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0059]

Agency Information Collection Activities; Comment Request; Annual Progress Report for the Title III Alternative Financing Program Under the Assistive Technology Act of 1998

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 13, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED–2014–ICCD–0059 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E115, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Robert Groenendaal, 202–245–7393 or Brian Bard, 202–245–7345.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how

might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Annual Progress Report for the Title III Alternative Financing Program Under the Assistive Technology Act of 1998.

OMB Control Number: 1820-0662.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 33.

Total Estimated Number of Annual Burden Hours: 891.

Abstract: The Rehabilitation Services Administration (RSA) of the U.S. Department of Education (ED) requests clearance for the renewal of a data collection instrument, Office of Management and Budget (OMB) Control Number 1820-0662, to be completed by grantees under title III of the Assistive Technology Act of 1998 as in effect prior to the amendments of 2004 (Public Law 105-394) (AT Act of 1998). Title III of the AT Act of 1998 authorized grants to public agencies to support the establishment and maintenance of alternative financing programs (AFPs) that feature one or more alternative financing mechanisms to enable individuals with disabilities and their family members, guardians, advocates, and authorized representatives to purchase assistive technology (AT). AFPs must operate and provide progress reports in perpetuity. Since 2000, grants have been awarded to 33 states to operate AFPs. The information collected through this data collection instrument is necessary for these grantees to comply with the reporting requirements of title III of the AT Act of 1998 and to satisfy 34 CFR 75.720, which requires them to submit an annual performance report. In addition, section 307 of the AT Act of 1998 requires that RSA submit to Congress an annual report on the activities conducted under title III. In order to make these possible, states must provide annual progress reports to RSA that fulfill the section 307 reporting requirements. This data collection instrument has been developed to ensure that states report data in a consistent manner in alignment with these requirements.

Dated: April 8, 2014.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014-08288 Filed 4-11-14; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Applications for New Awards; Title III, Part F, Alaska Native and Native Hawaiian-Serving Institutions (ANNH) Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information: Title III, Part F, Alaska Native-Serving and Native Hawaiian-Serving Institutions (ANNH) Program Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.031R and 84.031V.

Dates:

Applications Available: April 14, 2014.

Deadline for Transmittal of Applications: June 2, 2014.

Deadline for Intergovernmental Review: August 1, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Title III, Part F, ANNH Program is authorized under Section 371 of the Higher Education Act of 1965, as amended (HEA), to provide grants to eligible institutions of higher education (IHEs) to enable them to improve and expand their capacity to serve Alaska Natives and Native Hawaiians. IHEs may use these grants to plan, develop, or implement activities that promise to strengthen the institution.

Priorities: This notice contains two competitive preference priorities and two invitational priorities. The competitive preference priorities are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637) (the Supplemental Priorities).

Competitive Preference Priorities: For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from the competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to two points for each competitive

preference priority. The maximum competitive preference points an application can receive under this competition is four depending on how well the application meets these priorities.

These priorities are:

Competitive Preference Priority 1—Increasing Postsecondary Success.

Projects that are designed to address the following priority area: Increasing the number and proportion of high-need students (as defined in this notice) who persist in and complete college or other postsecondary education and training.

Competitive Preference Priority 2—Improving Productivity.

Projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (i.e., outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies.

Note: The types of projects identified in Competitive Preference Priority 2 are suggestions for ways to improve productivity. The Department recognizes that some of these examples, such as modification of teacher compensation systems, may not be relevant to this program. Accordingly, applicants should consider responding to this competitive preference priority in a way that improves productivity in a relevant higher education context.

Invitational Priorities: For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from the competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Support Activities That Strengthen Native Language Preservation and Revitalization.

Support activities that strengthen Native language preservation and revitalization at the IHE.

Invitational Priority 2—Promoting Science, Technology, Engineering and Mathematics (STEM) Education.

Projects that are designed to address the following priority area: providing students with increased access to rigorous and engaging coursework in STEM.

Note: There are no additional points awarded for invitational priorities.

Definitions: The following definitions are from the Supplemental Priorities and apply to the priorities in this notice:

High-need children and high-need students means children and students at risk of educational failure, such as children and students who are living in poverty, who are English learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Program Authority: 20 U.S.C. 1067q.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 98, and 99. (b) The regulations for this program in 34 CFR part 607. (c) The Supplemental Priorities.

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

Note: The eligibility criteria for this competition, including the enrollment of needy students and expenditure provisions, are set forth in section III. 1.

Eligible Applicants of this notice. The tie-breaker provisions are set in section V. 3. *Tie-breaker for Grants* of this notice.

II. Award Information

Type of Award: Individual development grants, cooperative arrangement grants, and renovation grants.

Estimated Available Funds: \$17,020,470.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2015 from the list of unfunded applicants from this competition.

Estimated Range of Awards: \$200,000—\$2,000,000 per year.

Estimated Average Size of Awards: Individual Development grants: \$650,000 per year.

Cooperative Arrangement grants: \$850,000 per year.

Renovation grants: \$1,500,000 per year.

Maximum Awards:

Individual Development grants: \$800,000 per year.

Cooperative Arrangement grants: \$900,000 per year.

Renovation grants: \$2,000,000 per year.

We will reject any application that proposes a budget exceeding the maximum award amount applicable to the type of grant sought (i.e., \$800,000, \$900,000, or \$2,000,000) for a single budget period of 12 months. The Assistant Secretary for the Office of Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* This program is authorized by Title III, Part F, of the HEA. An IHE that has been designated as an eligible institution for the ANNH Programs may apply for the grants announced in this notice. At the time of application, an Alaska Native-Serving Institution must have an enrollment of undergraduate students that is at least 20 percent Alaska Native. 34 CFR 607.2(e). At the time of application, a Native Hawaiian-Serving Institution must have an enrollment of undergraduate students that is at least 10 percent Native Hawaiian. 34 CFR 607.2(f).

To qualify as an eligible institution under any Title III, Part F program, including the ANNH Programs, an institution must—

(a) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(b) Be legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree;

(c) Be designated as an "eligible institution" by demonstrating that it: (1) has an enrollment of needy students as described in 34 CFR 607.3; and (2) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student, as described in 34 CFR 607.4.

Note: For purposes of establishing eligibility for this competition, on January 13, 2014, the Department published a notice inviting applications for eligibility

designation in the **Federal Register** (79 FR 2161). The deadline for submission of the designation of eligibility application was March 7, 2014. Only institutions that submitted the required application and received designation through this process are eligible to submit applications for this competition.

Relationship between Title V, Title III, Part A and Part F Programs.

Note 1: Title V and Title III, Part A—A current grantee under the Developing Hispanic-Serving Institutions (HSI) Program, which is authorized under Title V of the HEA, may not receive a grant under any HEA, Title III, Part A program.

Note 2: Title III, Part A—A current grantee under the Strengthening Institutions Program (SIP), Asian American and Native American Pacific Islander-Serving Institutions (AANAPISI) Program, Native American-Serving Nontribal Institutions (NASNTI) Program, and the Alaska Native and Native Hawaiian (ANNH) Program authorized by section 317 of the HEA, may not receive a grant authorized under any other Title III, Part A program.

Note 3: Title III, Part F—A current grantee under the AANAPISI, NASNTI, Hispanic Serving Institutions—STEM and Articulation (HSI—STEM), Predominantly Black Institutions (PBI) Programs, and ANNH Program authorized by Title III, Part F, Section 371 of the HEA, may not receive a grant authorized under any other Title III, Part F program under Section 371.

Note 4: Title III, Part A; Title III, Part F—An eligible IHE may submit a Title III, Part A and a Title III, Part F grant proposal and may receive funding under both Parts if an eligible IHE is not already receiving funding under one or both Parts at the time the applications are submitted. (See Note 2 and Note 3).

Note 5: Individual Development Grant, Cooperative Arrangement Grant, and a Renovation Grant—An eligible IHE that submits an application for an individual development grant, cooperative arrangement grant, and a renovation grant may not receive both an individual development grant and a renovation grant in the same fiscal year. However, an eligible IHE may be awarded both an individual development grant and a cooperative arrangement grant or both a renovation grant and cooperative arrangement grant in the same fiscal year. We will not award a second cooperative arrangement grant to an otherwise eligible IHE for an award year for which the IHE already has a cooperative arrangement grant award under the ANNH program.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds shall be used so that they supplement and, to the extent practical,

increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds (34 CFR 607.30(b)).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application via the Internet using the following address: <http://Grants.gov>. If you do not have access to the Internet, please contact LaTonya Brown, U.S. Department of Education, 1990 K Street NW., Room 6029, Washington, DC 20006-8513. Telephone: (202) 502-7619 or by email: latonya.brown@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotope, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limits: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria. We have established mandatory page limits for individual development grant and cooperative arrangement grant applications. You must limit the application narrative (Part III) to no more than 50 pages for individual development grants; and 70 pages for cooperative arrangement grants. This page limit requirement is separate from the five additional pages for the "Other" sections.

Note: Please include a separate heading when responding to each priority. For the purpose of determining compliance with the page limit, each page on which there are words will be counted at one full page. Applicants must use the following standards.

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides. Page numbers and an identifier may be outside the 1" margin.

Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, captions and all text in charts, tables, figures, and graphs. Charts, tables, figures, and graphs in the application narrative may be single

spaced and will count toward the page limit.

- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An applications submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance (SF-424); the Supplemental Information for SF-424 Form required by the Department of Education; Part II, the Budget section, Budget Information Non-Construction Programs (ED 524), with the exception of the budget narrative justification which is part of the page limitations of the application narrative section Part III; Part IV, the assurances and certifications; or the one-page program abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III), including the budget responses of the selection criteria and the "Other/PPP" section and "Other/IP" section for the priorities.

Note: Each of the Priority sections (Other/PPP and Other/IP) is limited to five pages. If you exceed the five-page limit in any one of the Priority sections, we will reject your application.

If you include any attachments or appendices not specifically requested in the application package, (such as resumes under Key Personnel) these items will be counted as part of your application narrative (Part III) for the purpose of the page limit requirement. You must include your complete response to the selection criteria in the application narrative.

Note: Sections A-C of the Budget Information-Non-Construction Programs Form (ED 524) Sections A-C are not the same as the narrative response to the Budget section of the selection criteria. The supporting narrative for the activity detail budget form lists the requested budget line items line by line.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*
Applications Available: April 14, 2014.

Deadline for Transmittal of Applications: June 2, 2014.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic

submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 1, 2014.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for these programs.

5. *Funding Restrictions:* We specify limitations on allowable costs in 34 CFR 607.30. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

Applicability of Executive Order 13202. Applicants that apply for construction funds under the Title III, Part A programs, must comply with Executive Order 13202, signed by former President George W. Bush on February 17, 2001, and amended on April 6, 2001. This Executive Order provides that recipients of Federal construction funds may not "require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)" or "otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s)." However, the Executive Order does not prohibit contractors or subcontractors from voluntarily entering into these agreements. Projects funded under these programs that include construction activity will be provided a copy of this Executive Order and will be asked to certify that they will adhere to it.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award*

Management: To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and,

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one-to-two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at www.SAM.gov. To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: <http://www2.ed.gov/fund/grant/apply/sam-faqs.html>.

In addition, if you are submitting your application via Grants.gov, you must (1)

be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: www.grants.gov/web/grants/register.html.

7. Other Submission Requirements: Applications for grants under the ANNH Programs must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications.

Applications for grants under the Alaska Native-Serving Institutions Program (CFDA number 84.031R) and the Native Hawaiian-Serving Institutions Program (CFDA number 84.031V) must be submitted electronically using the Government wide Grants.gov Apply site at www.grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for this competition at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.031, not 84.031R).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your

application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page atwww.G5.gov.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification

indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your

application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
 - You do not have the capacity to upload large documents to the Grants.gov system;
- and
- No later than two weeks before the application deadline date (14 calendar days, or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: LaTonya Brown, U.S. Department of Education, 1990 K Street, NW., room 6029, Washington, DC 20006-8513. FAX: (202) 502-7861.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031R or 84.031V), LBJ Basement Level I, 400 Maryland Avenue SW., Washington, DC 20202-4260.

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not

accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031R or 84.031V), 550 12th Street, SW., Room 7039, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

- (1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

- (2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for these programs are in 34 CFR 607.22(a) through (g). Applicants must address each of the following selection criteria (separately for each proposed activity). The total weight of the selection criteria is 100 points; the maximum score for each criterion is noted in parentheses.

- (a) Quality of the Applicant's Comprehensive Development Plan (Maximum 25 Points).

- (b) Quality of Activity Objectives (Maximum 15 Points).

(c) Quality of Implementation Strategy (Maximum 20 Points).

(d) Quality of Key Personnel (Maximum 7 Points).

(e) Quality of Project Management Plan (Maximum 10 Points).

(f) Quality of Evaluation Plan (Maximum 15 Points).

(g) Budget (Maximum 8 Points).

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Awards will be made in rank order according to the average score received from an evaluation performed by a panel of three non-Federal reviewers. That average score includes scores for competitive preference priorities 1 and 2.

Tie-breaker for Development Grants. In tie-breaking situations for development grants, 34 CFR 607.23(b) requires that additional points be awarded to any applicants that: (1) have an endowment fund of which the current market value, per full-time equivalent (FTE) enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student at comparable institutions that offer similar instruction; (2) have expenditures for library materials per FTE enrolled student that are less than the average expenditures per FTE enrolled student at comparable institutions that offer similar instruction; or (3) propose to carry out one or more of the following activities—

- (1) Faculty development;
- (2) Funds and administrative management;
- (3) Development and improvement of academic programs;
- (4) Acquisition of equipment for use in strengthening management and academic programs;
- (5) Joint use of facilities; and

(6) Student services.

For the purpose of these funding considerations, we use 2011–2012 data.

If a tie remains after applying the tie-breaker mechanism above, priority will be given in the case of applicants for: (a) Individual development grants to applicants that have the lowest endowment values per FTE student; and (b) cooperative arrangement development grants to applicants in accordance with section 394(b) of the HEA, if the Secretary determines that the cooperative arrangement is geographically and economically sound or will benefit the applicant institution.

3. *Special Conditions:* Under 34 CFR 74.14, 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant (34 CFR 607.24); or, is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure

information as directed by the Secretary in 34 CFR 75.118 and 34 CFR 607.31. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Strengthening Alaska Native and Native Hawaiian-Serving Institutions Programs:

(a) The percentage change, over the five-year period, of the number of full-time degree-seeking undergraduates enrolled at Alaska Native and Native Hawaiian-Serving Institutions. Note that this is a long-term measure, which will be used to periodically gauge performance, beginning in FY 2014.

(b) The percentage of first-time, full-time degree-seeking undergraduate students at 4-year Alaska Native and Native Hawaiian-Serving Institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same Alaska Native and Native Hawaiian-Serving Institution;

(c) The percentage of first-time, full-time degree-seeking undergraduate students at 2-year Alaska Native and Native Hawaiian-Serving Institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same Alaska Native and Native Hawaiian-Serving Institution;

(d) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at 4-year Alaska Native and Native Hawaiian-Serving Institutions graduating within six years of enrollment; and

(e) The percentage of first-time, full-time degree seeking undergraduate students enrolled at 2-year Alaska Native and Native Hawaiian-Serving Institutions graduating within three years of enrollment.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 607.31, the extent to which a grantee has made “substantial progress toward achieving the objectives set forth in its grant application, including, if applicable, the institution's success in institutionalizing practices and improvements developed under the grant.” This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner

that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT:

LaTonya Brown, U.S. Department of Education, 1990 K Street, NW., room 6029, Washington, DC 20006-8513. Telephone: (202) 502-7619 or by email: latonya.brown@ed.gov. If you use a TDD or a TTY, call the FRS, toll free, at 1-800-877-8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 9, 2014.

Lynn B. Mahaffie,

Senior Director, Policy Coordination, Development, and Accreditation Service, delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2014-08383 Filed 4-11-14; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Applications for New Awards; Title III, Part A, Alaska Native and Native Hawaiian-Serving Institutions (ANNH) Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information: Title III, Part A, Alaska Native-Serving and Native Hawaiian-Serving Institutions (ANNH) Program Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.031N and 84.031W.

DATES:

Applications Available: April 14, 2014.

Deadline for Transmittal of Applications: June 2, 2014.

Deadline for Intergovernmental Review: August 1, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Title III, Part A, ANNH Program is authorized under Section 317 of the Higher Education Act of 1965, as amended (HEA) to provide grants to eligible institutions of higher education (IHEs) to enable them to improve and expand their capacity to serve Alaska Natives and Native Hawaiians. Institutions may use these grants to plan, develop, or implement activities that strengthen the institution.

Priorities: This notice contains two competitive preference priorities and one invitational priority. The competitive preference priorities are from the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637) (the Supplemental Priorities).

Competitive Preference Priorities: For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from the competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to two points for each competitive preference priority. The maximum competitive preference points an application can receive under this competition is four depending on how well the application meets these priorities.

These priorities are:

Competitive Preference Priority 1—Increasing Postsecondary Success.

Projects that are designed to address the following priority area: Increasing

the number and proportion of high-need students (as defined in this notice) who persist in and complete college or other postsecondary education and training.

Competitive Preference Priority 2—Improving Productivity.

Projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (i.e., outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies.

Note: The types of projects identified in Competitive Preference Priority 2 are suggestions for ways to improve productivity. The Department recognizes that some of these examples, such as modification of teacher compensation systems, may not be relevant to this program. Accordingly, applicants should consider responding to this competitive preference priority in a way that improves productivity in a relevant higher education context.

Invitational Priority: For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Support activities that strengthen Native language preservation and revitalization at the IHE.

Note: There are no additional points awarded for the invitational priority.

Definitions: The following definitions are from the Supplemental Priorities and apply to the priorities in this notice:

High-need children and high-need students means children and students at risk of educational failure, such as children and students who are living in poverty, who are English learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities.

Open educational resources (OER) means teaching, learning, and research

resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Program Authority: 20 U.S.C. 1057–1059d.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 98 and 99. (b) The regulations for this program in 34 CFR part 607. (c) The Supplemental Priorities.

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

Note: The eligibility criteria for this competition, including the enrollment of needy students and expenditure provisions, are set forth in section III.1. *Eligible Applicants* of this notice. The tie-breaker provisions are set in section V.3. *Tie-breaker for Grants* of this notice.

II. Award Information

Type of Award: Discretionary grants.
Estimated Available Funds:

\$1,874,766.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2015 from the list of unfunded applicants from this competition.

Estimated Range of Awards:
\$200,000–\$859,000 per year.

Estimated Average Size of Awards:
\$624,922 per year.

Maximum Award: We will reject any application that proposes a budget exceeding \$859,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* This program is authorized by Title III, Part A, of the HEA. An IHE that has been designated as an eligible institution for the ANNH Programs may apply for the grants announced in this notice. At the time of application, an Alaska Native-Serving Institution must have an enrollment of undergraduate students that is at least 20 percent Alaska Native. 34 CFR 607.2(e). At the time of application, a Native Hawaiian-Serving Institution must have an enrollment of

undergraduate students that is at least 10 percent Native Hawaiian. 34 CFR 607.2(f).

To qualify as an eligible institution under any Title III, Part A program, including the ANNH Programs, an institution must—

(a) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(b) Be legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree;

(c) Be designated as an “eligible institution” by demonstrating that it: (1) Has an enrollment of needy students as described in 34 CFR 607.3; and (2) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student, as described in 34 CFR 607.4.

Note: For purposes of establishing eligibility for this competition, on January 13, 2014, the Department published a notice inviting applications for eligibility designation in the **Federal Register** (79 FR 2161). The deadline for submission of the designation of eligibility application was March 7, 2014. Only institutions that submitted the required application and received designation through this process are eligible to submit applications for this competition.

Relationship between Title V, Title III, Part A and Part F Programs.

Note 1: Title V and Title III, Part A—A current grantee under the Developing Hispanic-Serving Institutions (HSI) Program which is authorized under Title V of the HEA, may not receive a grant under any HEA, Title III, Part A program.

Note 2: Title III, Part A—A current grantee under the Strengthening Institutions Program (SIP), Asian American and Native American Pacific Islander-Serving Institutions (AANAPISI) Program, Native American-Serving Nontribal Institutions (NASNTI) Program, and the Alaska Native and Native Hawaiian (ANNH) Program authorized by section 317 of the HEA, may not receive a grant authorized under any other Title III, Part A program.

Note 3: Title III, Part F—A current grantee under the AANAPISI, NASNTI, Hispanic Serving Institutions—STEM and Articulation (HSI—STEM), Predominantly Black Institutions (PBI) Programs, and ANNH Program authorized by Title III, Part F, Section 371 of the HEA, may not receive a grant authorized under any other Title III, Part F program under Section 371.

Note 4: Title III, Part A; Title III, Part F—An eligible IHE may submit a Title III, Part A and a Title III, Part F grant proposal and

may receive funding under both Parts if the IHE is not already receiving funding under one or both Parts at the time the applications are submitted. (*See Note 2 and Note 3*).

Note 5: Individual Development Grant and Cooperative Arrangement Grant—An eligible IHE that submits applications for an individual development grant and a cooperative arrangement grant in this competition may be awarded both in the same fiscal year. However, we will not award a second cooperative arrangement grant to an otherwise eligible IHE for an award year for which the IHE already has a cooperative arrangement grant award under the ANNH program.

2.a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds shall be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds (34 CFR 607.30(b)).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application via the Internet using the following address: <http://Grants.gov>. If you do not have access to the Internet, please contact LaTonya Brown, U.S. Department of Education, 1990 K Street NW., Room 6029, Washington, DC 20006–8513. Telephone: (202) 502–7619, or by email: latonya.brown@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limits: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria. We have established mandatory page limits for the Individual Development Grant and Cooperative Arrangement Grant applications. You must limit the application narrative (Part III) to no more than 50 pages for

the Individual Development Grant; and 70 pages for cooperative arrangement grants. This page limit requirement is separate from the five additional pages for the "Other" sections.

Note: Please include a separate heading when responding to each priority. For the purpose of determining compliance with the page limit, each page on which there are words will be counted at one full page. Applicants must use the following standards.

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides. Page numbers and an identifier may be outside the 1" margin.

- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, captions and all text in charts, tables, figures, and graphs. Charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.

- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An applications submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance (SF-424); the Supplemental Information for SF-424 Form required by the Department of Education; Part II, the Budget section and the Budget Information Non-Construction Programs (ED 524), with the exception of the budget narrative justification which is part of the page limitations of the application narrative section Part III); Part IV, the assurances and certifications; or the one-page program abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III), including the budget responses of the selection criteria and the "Other/CPP" section and "Other/IP" section for the priorities.

Note: Each of the Priority sections (Other/CPP and Other/IP) is limited to five pages. If you exceed the five-page limit under any one of the Priority sections, we will reject your application.

If you include any attachments or appendices not specifically requested in the application package, (such as resumes under Key Personnel) these items will be counted as part of your application narrative (Part III) for the purpose of the page limit requirement.

You must include your complete response to the selection criteria in the application narrative.

Note: Sections A–C of the Budget Information-Non-Construction Programs Form (ED 524) are not the same as the narrative response to the Budget section of the selection criteria. The supporting narrative for the activity detail budget form lists the requested budget line items line by line.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times: Applications Available:* April 14, 2014.

Deadline for Transmittal of Applications: June 2, 2014.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. *Deadline for Intergovernmental Review:* August 1, 2014.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for these programs.

5. *Funding Restrictions:* We specify limitations on allowable costs in 34 CFR 607.30. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

Applicability of Executive Order 13202. Applicants that apply for construction funds under the Title III, Part A programs, must comply with Executive Order 13202, signed by former President George W. Bush on February 17, 2001, and amended on

April 6, 2001. This Executive Order provides that recipients of Federal construction funds may not "require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)" or "otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s)." However, the Executive Order does not prohibit contractors or subcontractors from voluntarily entering into these agreements. Projects funded under these programs that include construction activity will be provided a copy of this Executive Order and will be asked to certify that they will adhere to it.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one-to-two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS

number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at www.SAM.gov. To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: <http://www2.ed.gov/fund/grant/apply/sam-faqs.html>.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: www.grants.gov/web/grants/register.html.

7. Other Submission Requirements: Applications for grants under the ANNH Programs must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications.

Applications for grants under the Alaska Native-Serving Institutions Program (CFDA number 84.031N) and the Native Hawaiian-Serving Institutions Program (CFDA number 84.031W) must be submitted electronically using the Government wide Grants.gov Apply site at www.grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks

before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for this competition at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.031, not 84.031N).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at www.G5.gov.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an

explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days, or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: LaTonya Brown, U.S. Department of Education, 1990 K Street NW., Room 6029, Washington, DC 20006–8513. FAX: (202) 502–7861.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you

may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031N or 84.031W), LBJ Basement Level I, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031N or 84.031W), 550 12th Street, SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. **Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

- (1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under

which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. **Selection Criteria:** The selection criteria for these programs are in 34 CFR 607.22(a) through (g). Applicants must address each of the following selection criteria (separately for each proposed activity). The total weight of the selection criteria is 100 points; the maximum score for each criterion is noted in parentheses.

- (a) Quality of the Applicant's Comprehensive Development Plan (Maximum 25 Points).
- (b) Quality of Activity Objectives (Maximum 15 Points).
- (c) Quality of Implementation Strategy (Maximum 20 Points).
- (d) Quality of Key Personnel (Maximum 7 Points).
- (e) Quality of Project Management Plan (Maximum 10 Points).
- (f) Quality of Evaluation Plan (Maximum 15 Points).
- (g) Budget (Maximum 8 Points).

2. **Review and Selection Process:** We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)–(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Awards will be made in rank order according to the average score received from an evaluation performed by a panel of three non-Federal reviewers. That average score includes scores for competitive preference priorities 1 and 2.

Tie-breaker for Development Grants. In tie-breaking situations for development grants, 34 CFR 607.23(b)

requires that additional points be awarded to any applicants that: (1) Have an endowment fund of which the current market value, per full-time equivalent (FTE) enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student at comparable institutions that offer similar instruction; (2) have expenditures for library materials per FTE enrolled student that are less than the average expenditures per FTE enrolled student at comparable institutions that offer similar instruction; or (3) propose to carry out one or more of the following activities—

- (1) Faculty development;
- (2) Funds and administrative management;
- (3) Development and improvement of academic programs;
- (4) Acquisition of equipment for use in strengthening management and academic programs;
- (5) Joint use of facilities; and
- (6) Student services.

For the purpose of these funding considerations, we use 2011–2012 data.

If a tie remains after applying the tie-breaker mechanism above, priority will be given in the case of applicants for: (a) Individual development grants to applicants that have the lowest endowment values per FTE student; and (b) cooperative arrangement development grants to applicants in accordance with section 394(b) of the HEA, if the Secretary determines that the cooperative arrangement is geographically and economically sound or will benefit the applicant institution.

3. *Special Conditions:* Under 34 CFR 74.14, 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant (34 CFR 607.24); or, is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other

requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary in 34 CFR 75.118 and 34 CFR 607.31. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Strengthening Alaska Native and Native Hawaiian-Serving Institutions Programs:

(a) The percentage change, over the five-year period, of the number of full-time degree-seeking undergraduates enrolled at Alaska Native and Native Hawaiian-Serving Institutions. Note that this is a long-term measure, which will be used to periodically gauge performance, beginning in FY 2014.

(b) The percentage of first-time, full-time degree-seeking undergraduate students at 4-year Alaska Native and Native Hawaiian-Serving Institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same Alaska Native and Native Hawaiian-Serving Institution;

(c) The percentage of first-time, full-time degree-seeking undergraduate students at 2-year Alaska Native and Native Hawaiian-Serving Institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same Alaska Native and Native Hawaiian-Serving Institution;

(d) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at 4-year Alaska Native and Native Hawaiian-Serving Institutions graduating within six years of enrollment; and

(e) The percentage of first-time, full-time degree seeking undergraduate students enrolled at 2-year Alaska Native and Native Hawaiian-Serving Institutions graduating within three years of enrollment.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 607.31, the extent to which a grantee has made “substantial progress toward achieving the objectives set forth in its grant application, including, if applicable, the institution’s success in institutionalizing practices and improvements developed under the grant.” This consideration includes the review of a grantee’s progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: LaTonya Brown, U.S. Department of Education, 1990 K Street NW., Room 6029, Washington, DC 20006–8513. Telephone: (202) 502–7619 or, by email: latonya.brown@ed.gov.

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department

published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 9, 2014.

Lynn B. Mahaffie,

Senior Director, Policy Coordination, Development, and Accreditation Service, delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2014-08361 Filed 4-11-14; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Reopening the Application for Title V Eligibility Designation for Fiscal Year 2014; Promoting Postbaccalaureate Opportunities for Hispanic Americans Program (PPOHA)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031M.

SUMMARY: In this notice, the Department announces the reopening of the period for submitting an application for a designation of eligibility under the PPOHA program by those institutions that intend to apply for a grant under the PPOHA program to be announced later in 2014. The decision to hold a new competition for PPOHA was made after the FY 2014 Eligibility Notice deadline of March 7, 2014. The eligibility process is being reopened to allow institutions that have not yet applied for eligibility to submit applications. This limited reopening is intended to ensure that all potential applicants to the PPOHA program have the opportunity to submit applications for eligibility prior to the announcement of this competition. If you have already submitted an application for eligibility in response to the FY 2014 Eligibility Notice, you do not need to resubmit your application.

DATES: *Application Available:* April 14, 2014.

Deadline for Transmittal of Applications: May 14, 2014.

ADDRESSES: Applications for designation of eligibility must be submitted electronically using the

following Web site: <https://opeweb.ed.gov/title3and5>.

To enter the Web site, you must use your institution's unique eight-digit identifier, i.e., your Office of Postsecondary Education Identification Number (OPE ID Number). Your business office or student financial aid office should have the OPE ID Number. If not, contact the Department using the email addresses listed in this notice under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT**.

You will find detailed instructions for completing the application form electronically at the following Web site: <http://www2.ed.gov/about/offices/list/ope/itudes/eligibility2014.pdf>.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: Robyn Wood or Jeffrey Hartman, Institutional Service, U.S. Department of Education, 1990 K Street NW., Room 6042, Request for Eligibility Designation, Washington, DC 20006-8513.

You can contact these individuals at the following email addresses or phone numbers:

Robyn.Wood@ed.gov, 202-502-7437.

Jeffrey.Hartman@ed.gov, 202-502-7607.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: On January 13, 2014, we published in the **Federal Register** (79 FR 2161) a notice inviting applications for designation as an eligible institution for the programs authorized under title III and title V of the Higher Education Act of 1965, as amended (FY 2014 Eligibility Notice). The FY 2014 Eligibility Notice established a March 7, 2014, deadline date for applicants to apply for designation as an eligible institution under the title III and title V programs. For the PPOHA program only, this notice reopens the deadline date for applicants to apply for designation as an eligible institution.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audio tape, or compact disc) on request to one of the contact persons listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you

can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1102-1102c.

Dated: April 9, 2014.

Lynn B. Mahaffie,

Senior Director, Policy Coordination, Development, and Accreditation Service, delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2014-08376 Filed 4-11-14; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9909-58-OA]

Notification of a Public Teleconference of the Great Lakes Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) announces a public teleconference of the Great Lakes Advisory Board (Board). The purpose of the teleconference is to set the Board's work schedule for 2014.

DATES: The teleconference will be held on Tuesday, April 22, 2014 from 10:00 a.m. to 12 p.m. Central Time, 11:00 a.m. to 1:00 p.m. Eastern Time. The teleconference number is: (877) 744-6030; Participant code: 24653386. An opportunity will be provided to the public to comment during the teleconference.

ADDRESSES: The public teleconference will take place by telephone only.

FOR FURTHER INFORMATION: Any member of the public wishing further information regarding this teleconference may contact Taylor Fiscus, Acting Designated Federal Officer (DFO) by telephone at 312-353-6059 or email at <mailto:Fiscus.Taylor@epa.gov>. General information on the Great Lakes Restoration Initiative (GLRI) and the Board can be found on the GLRI Web site at <http://www.glri.us>.

SUPPLEMENTARY INFORMATION:

Background: The Board is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92-463. EPA established the Board in 2013 to provide independent advice to the EPA Administrator in her capacity as Chair of the federal Great Lakes Interagency Task Force (IATF). The Board conducts business in accordance with FACA and related regulations.

The Board consists of 18 members appointed by EPA's Administrator in her capacity as IATF Chair. Members serve as representatives of state, local and tribal government, environmental groups, agriculture, business, transportation, foundations, educational institutions, and as technical experts.

The Board held teleconferences and meetings in 2013 to develop recommendations for the FY 2015-2019 GLRI Action Plan. In December 2013, the Board issued its Advisory Report. See <http://greatlakesrestoration.us/advisory/index.html>.

Availability of Teleconference Materials: The agenda and other materials in support of the teleconference will be available on the GLRI Web site at <http://www.glri.us> in advance of the teleconference.

Procedures for Providing Public Input: Federal advisory committees provide independent advice to federal agencies. Members of the public can submit relevant comments for consideration by the Board. Input from the public to the Board will have the most impact if it provides specific information for the Board to consider. Members of the public wishing to provide comments should contact the Acting DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at this public teleconference will be limited to three minutes per speaker, subject to the number of people wanting to comment. Interested parties should contact the Acting DFO in writing (preferably via email) at the contact information noted above by April 21, 2014 to be placed on the list of public speakers for the teleconference.

Written Statements: Written statements must be received by April 21, 2014 so that the information may be made available to the Board for consideration. Written statements should be supplied to the Acting DFO in the following formats: One hard copy with original signature and one electronic copy via email. Commenters are requested to provide two versions of each document submitted: One each with and without signatures because only documents without signatures may be published on the GLRI Web page.

Accessibility: For information on access or services for individuals with disabilities, please contact the Acting DFO at the phone number or email address noted above, preferably at least 10 days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: April 3, 2014.

Cameron Davis,

Senior Advisor to the Administrator.

[FR Doc. 2014-08333 Filed 4-11-14; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: February 26, 2014; 10:00 a.m.

PLACE: 800 N. Capitol Street NW., First Floor Hearing Room, Washington, DC

STATUS: The first portion of the meeting was held in Open Session; the second in Closed Session. The agenda is now being revised pursuant to 46 CFR 502.83 because the item considered in closed session, "Staff Follow-up Briefing Concerning FMC Global Regulatory Summit", included a broader discussion of the Commission's agreement review process. The Federal Maritime Commission has voted unanimously to revise the agenda.

Matters Considered

Open Session

1. Update on the China Value Added Tax Affecting Ocean Export Freight Shipments
2. FMC Information Resources Management Strategic Plan
3. Staff Recommendation Concerning Third Party Subpoena

Closed Session

1. Staff Follow-up Briefing Concerning FMC Global Regulatory Summit Including FMC Agreement Review Process

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary (202) 523 5725

Karen V. Gregory,
Secretary.

[FR Doc. 2014-08479 Filed 4-10-14; 4:15 pm]

BILLING CODE 6730-01-P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

April 9, 2014.

TIME AND DATE: 2:00 p.m., Wednesday, April 23, 2014

PLACE: The Department of Labor Auditorium, Frances Perkins Building, 200 Constitution Avenue NW, Washington, DC 20210

STATUS: Open

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor v. McCoy Elkhorn Coal Corporation and Jason Robinson*, Docket Nos. KENT 2008-260, et al. (Issues include whether the Administrative Law Judge erred in finding high negligence, unwarrantable failure, a designation of "significant and substantial" and individual liability with regard to a violation for coal accumulations.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434-9950/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2014-08449 Filed 4-10-14; 11:15 am]

BILLING CODE 6735-01-P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

April 9, 2014.

TIME AND DATE: 10:00 a.m., Thursday, April 24, 2014

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance)

STATUS: Open

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor v. McCoy Elkhorn Coal Corporation and Jason Robinson*, Docket Nos. KENT 2008-260, et al. (Issues include whether the Administrative Law Judge erred in finding high negligence, unwarrantable failure, a designation of "significant and substantial" and individual liability with regard to a violation for coal accumulations.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434-9950/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Emogene Johnson,
Administrative Assistant.

[FR Doc. 2014-08450 Filed 4-10-14; 11:15 am]

BILLING CODE 6735-01-P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this

waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED MARCH 1, 2014 THRU MARCH 31, 2014

03/04/2014

20140420	.....	G	Textron Inc.; Beech Holdings, LLC Textron Inc.
20140561	.....	G	Audax Private Equity Fund IV, L.P.; Pfingsten Partners Fund IV, L.P.; Audax Private Equity Fund IV, L.P.
20140581	.....	G	Microchip Technology Inc.; Supertex, Inc.; Microchip Technology Inc.
20140582	.....	G	Post Holdings, Inc.; Nestle S.A.; Post Holdings, Inc.
20140583	.....	G	Montagu IV LP; Rexam PLC; Montagu IV LP.
20140590	.....	G	Phillip Frost, M.D.; Opko Health Inc.; Philip Frost, M.D.
20140592	.....	G	GSI Group, Inc.; JADAK LLC; GSI Group, Inc.
20140596	.....	G	ABA Teams LLC; Spirits of St. Louis Basketball Club L.P.; ABA Teams LLC.
20140605	.....	G	Baytex Energy Corp.; Aurora Oil & Gas Limited; Baytex Energy Corp.
20140615	.....	G	Quincy Newspapers, Inc.; Silver Point Capital Fund, L.P.; Quincy Newspapers, Inc.

03/05/2014

20140449	.....	G	Mr. Li Li and Mrs. Li Tan; SPL Acquisition Corp.; Mr. Li Li and Mrs. Li Tan.
20140530	.....	G	Kotobuki Realty Co., Ltd.; Beam Inc.; Kotobuki Realty Co., Ltd.
20140568	.....	G	ecoserv Holdings, LLC; Newpark Resources, Inc.; ecoserv Holdings, LLC.
20140574	.....	G	Rond Point Immobilier SAS; Accelrys, Inc.; Rond Point Immobilier SAS.
20140599	.....	G	Starr International Company, Inc.; MPH Acquisition Holdings LLC; Starr International Company, Inc.
20140614	.....	G	OCM Opportunities ALS Holdings, L.P.; Quanex Building Products Corporation; OCM Opportunities ALS Holdings, L.P.

03/06/2014

20140587	.....	G	Mubadala Development Company PJSC; Advanced Micro Devices, Inc.; Mubadala Development Company PJSC.
20140595	.....	G	KKR & Co., L.P.; KKR Financial Holdings LLC; KKR & Co., L.P.

03/07/2014

20140556	.....	G	Carlyle U.S. Equity Opportunity Fund, L.P.; ECI Acquisition Holdings, Inc.; Carlyle U.S. Equity Opportunity Fund, L.P.
20140601	.....	G	Warren A. Hood, Jr.; Bemis Company, Inc.; Warren A. Hood, Jr.
20140611	.....	G	Sun Capital Partners V, L.P.; Moeller Family Limited Partnership, LLP; Sun Capital Partners V, L.P.

03/10/2014

20140537	.....	G	First American Financial Corporation; Verisk Analytics, Inc.; First American Financial Corporation.
20140610	.....	G	Marubeni Corporation; Eastern Fish Company; Marubeni Corporation.
20140621	.....	G	3M Company; William P. Kelly; 3M Company.
20140625	.....	G	Scioto Holdings, Inc.; CCMP Capital Investors II, L.P.; Scioto Holdings, Inc.
20140626	.....	G	William A. Furman; The Greenbrier Companies, Inc.; William A. Furman.
20140633	.....	G	NRG Energy, Inc.; Dominion Resources, Inc.; NRG Energy, Inc.
20140641	.....	G	Dr. Guanqiu Lu; Fisker Automotive Holdings, Inc.; Dr. Guanqiu Lu.

03/11/2014

20140580	.....	G	Sumitomo Chemical Co., Ltd.; Edison Pharmaceuticals, Inc.; Sumitomo Chemical Co., Ltd.
20140612	.....	G	United Rentals, Inc.; National Pump & Compressor, Ltd.; United Rentals, Inc.
20140613	.....	G	Genossenschaft Constanter; Wells Fargo & Company; Genossenschaft Constanter.
20140623	.....	G	Blackstone Capital Partners VI L.P.; Hellman & Friedman Capital Partners VI, L.P.; Blackstone Capital Partners VI L.P.
20140629	.....	G	Kaman Corporation; B.W. Rogers Company; Kaman Corporation.
20140630	.....	G	Access Midstream Partners, L.P.; Chesapeake Energy Corporation; Access Midstream Partners, L.P.

EARLY TERMINATIONS GRANTED—Continued
MARCH 1, 2014 THRU MARCH 31, 2014

03/12/2014

20140431	G	Sandvik AB; Drillbit Holding Company Limited; Sandvik AB.
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03/13/2014

20140604	G	Smith & Nephew plc; ArthroCare Corporation; Smith & Nephew plc.
20140617	.....	G	Wells Fargo & Company; Afsaneh Beschloss; Wells Fargo & Company.

03/14/2014

20140584	.....	G	Entegris, Inc.; ATMI, Inc.; Entegris, Inc.
20140586	.....	G	Belden Inc.; Francisco Partners II (Cayman), L.P.; Belden Inc.
20140624	.....	G	Oracle Corporation; Blue Kai, Inc.; Oracle Corporation.
20140627	.....	G	PhotoMedex, Inc.; LCA-Vision Inc.; PhotoMedex, Inc.
20140639	.....	G	BBIP Lake AIV, L.P.; Integrys Energy Group, Inc.; BBIP Lake AIV, L.P.
20140645	.....	G	Crown Finance Foundation; Alvogen Aztiq Societe Civile; Crown Finance Foundation.
20140646	.....	G	ACON Equity Partners III, L.P.; J.H. Whitney VI, L.P.; ACON Equity Partners III, L.P.

03/18/2014

20140616	.....	G	Golden Gate Capital Opportunity Fund, L.P.; Zale Corporation; Golden Gate Capital Opportunity Fund, L.P.
20140649	.....	G	Marathon Petroleum Corporation; Explorer Pipeline Company; Marathon Petroleum Corporation.
20140650	.....	G	Sunoco Logistics Partners L.P.; Explorer Pipeline Company; Sunoco Logistics Partners L.P.
20140651	.....	G	PDM Group Holdings Corporation; Hellman & Friedman Capital Partners VI, L.P.; PDM Group Holdings Corporation.
20140655	.....	G	Merit Energy Company, LLC; Occidental Petroleum Corporation; Merit Energy Company, LLC.
20140656	.....	G	NGP Natural Resources X, L.P.; General Mills, Inc.; NGP Natural Resources X, L.P.
20140658	.....	G	Calumet Specialty Products Partners, L.P.; ADF Holdings, Inc.; Calumet Specialty Products Partners, L.P.

03/19/2014

20140591	.....	G	Safran SA; Eaton Corporation plc; Safran SA.
20140606	.....	G	Synopsys, Inc.; Coverity, Inc.; Synopsys, Inc.
20140642	.....	G	Wells Fargo & Company; k1 Ventures Limited; Wells Fargo & Company.
20140659	G	Partners Limited; AR M?ller og Hustru Chastine Mc-Kinney; Partners Limited.

03/20/2014

20140660	G	ARYZTA AG; Quad-C Partners VII, LP.; ARYZTA AG.
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03/21/2014

20131053	G	CoreLogic, Inc.; TPG VI Ontario 1 AIV, L.P.; CoreLogic, Inc.
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03/24/2014

20140514	G	Memorial Health System; Passavant Memorial Area Hospital Association; Memorial Health System.
20140620	.....	G	Grupo Bimbo, S.A.B. De C.V.; Maple Leaf Foods Inc.; Grupo Bimbo, S.A.B. De C.V.
20140640	.....	G	Wolters Kluwer NV.; Third Coast Holdings, Inc.; Wolters Kluwer N.V.
20140643	.....	G	Good Technology Corporation; Lazard Technology Partners II, LP; Good Technology Corporation.

03/25/2014

20140636	.....	G	Eli Lilly and Company; Paul Wesjohann & Co. GmbH III; Eli Lilly and Company.
20140662	.....	G	Phillips 66; Explorer Pipeline Company; Phillips 66.
20140667	.....	G	Kose Corporation; Encore Consumer Capital Fund, L.P.; Kose Corporation.
20140672	.....	G	Providence Equity Partners VII—A L.P.; New Asurion Corporation; Providence Equity Partners VII—A L.P.
20140673	.....	G	HGGC Fund II, L.P.; Silver Lake Partner II, L.P.; HGGC Fund II, L.P.
20140675	.....	G	Riverside Capital Appreciation Fund VI, L.P.; Peter P. Jenkins III; Riverside Capital Appreciation Fund VI, L.P.
20140682	.....	G	Audax Private Equity Fund IV, L.P.; Levine Leichtman Capital Partners IV, L.P.; Audax Private Equity Fund IV, L.P.
20140688	.....	G	Sun Capital Partners VI, L.P.; ESCO Technologies Inc.; Sun Capital Partners VI, L.P.

03/26/2014

20140632	.....	G	Marubeni Corporation; Total Finance, LLC; Marubeni Corporation.
20140652	.....	G	Luxor Capital Partners Offshore, Ltd.; Nicholas Schorsch; Luxor Capital Partners Offshore, Ltd.
20140653	.....	G	Luxor Capital Partners, LP; Nicholas Schorsch; Luxor Capital Partners, LP.
20140676	.....	G	AMEC plc; Foster Wheeler AG; AMEC plc.

03/27/2014

20140577	.....	G	Accelerate Parent Corp.; TTT Holdings, Inc.; Accelerate Parent Corp.
20140631	.....	G	New Mountain Partners III, L.P.; Avaya Holdings Corp.; New Mountain Partners III, L.P.
20140647	.....	G	Prospect Capital Corporation; Mario V. Parisi, Jr.; Prospect Capital Corporation.

EARLY TERMINATIONS GRANTED—Continued
MARCH 1, 2014 THRU MARCH 31, 2014

20140648	G	Prospect Capital Corporation; Jorge A. Mayo; Prospect Capital Corporation.
03/31/2014		
20140690	G	Hellman & Friedman Capital Partners VII, L.P.; Permira IV Continuing L.P. 2; Hellman & Friedman Capital Partners VII, L.P.
20140696	G	Blackstone Capital Partners VI L.P.; Accuvant LLC; Blackstone Capital Partners VI L.P.
20140698	Y	LLCP PCS H LP; FMC Technologies, Inc.; LLCP PCS II LP.
20140702	G	LG Chem, Ltd.; NanoH20, Inc.; LG Chem, Ltd.
20140704	G	Matthews International Corporation; Schawk, Inc.; Matthews International Corporation.

FOR FURTHER INFORMATION CONTACT:

Renee Chapman, Contact Representative or Theresa Kingsberry, Legal Assistant, Federal Trade Commission, Premerger Notification Office, Bureau Of Competition, Room H-303, Washington, DC 20580, (202) 326-3100.

By Direction Of The Commission.

Donald S. Clark,
Secretary.

[FR Doc. 2014-08236 Filed 4-11-14; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

[OMB Control No. 9000-0018; Docket 2014-0055; Sequence 8]

**Information Collection; Federal
Acquisition Regulation; Certification of
Independent Price Determination and
Parent Company and Identifying Data**

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat Division (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning certification of independent price determination and parent company and identifying data.

DATES: Submit comments on or before June 13, 2014.

ADDRESSES: Submit comments identified by Information Collection 9000-0018, CERTIFICATION OF INDEPENDENT PRICE

**DETERMINATION AND PARENT
COMPANY AND IDENTIFYING DATA**
by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000-0018. Select the link "Comment Now" that corresponds with "Information Collection 9000-0018, Certification of Independent Price Determination and Parent Company and Identifying Data." Follow the instructions provided on the screen. Please include your name, company name (if any), and "Information Collection 9000-0018, Certification of Independent Price Determination and Parent Company and Identifying Data" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services

Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000-0018.

Instructions: Please submit comments only and cite Information Collection 9000-0018, in all correspondence related to this collection. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Marissa Petrusek, Procurement Analyst, Contract Policy Branch, GSA 202-501-0136 or email marissa.petrusek@gsa.gov.

SUPPLEMENTARY INFORMATION:**A. Purpose**

As a first step in assuring that Government contracts are not awarded to firms violating anti-trust laws, offerors on Government contracts must complete the certificate of independent price determination. The Contracting Officer will reject certificates where the offeror has deleted or modified portions of the certificate and has not furnished with the certificate a signed statement of the circumstances of disclosure of prices. Agencies are required to report

to the Attorney General rejected offers where the offeror deleted or modified the certificate or the certificate is suspected of being false.

The information collection is required each time an offeror responds to a solicitation for firm-fixed price contract or fixed-price economic price adjustment contract unless the acquisition is (1) made under the simplified acquisition threshold; (2) at the request for technical proposals under two-step sealed bidding procedures; or (3) for utility services for which rates are set by law or regulation. The FAR rule requires a Certificate of Independent Price Determination so that contractors certify that the prices in their offer have been arrived at independently, have not been or will not be knowingly disclosed, and have not been submitted for the purpose of restricting competition. This clause does not apply to commercial items.

B. Annual Reporting Burden

A reassessment of FAR 3.103 and FAR 52.203-2 was performed. Based on the comprehensive reassessment performed, this information collection resulted in a slight decrease in the annual number of responses and an increase in the annual time burden from the previous information collection that was published in the **Federal Register** at 76 FR 37353 on June 27, 2011. The decrease in the annual number of responses is likely a result of updated data for Fiscal Year (FY) 2013 from the Federal Procurement Data System (FPDS). The increase in the annual time burden from the previous information collection increases the amount of time to research and prepare the certification from .01 hours (less than one minute) to .25 hours (15 minutes). No public comments were received in prior years that have challenged the validity of the Government's estimate. Updates were made to the average wages and overhead based on FY 2013 Office of Personnel Management and Office of Management and Budget rates.

Respondents: 13,486.

Responses per Respondent: 76.
Total Responses: 1,024,936.
Hours per Response: .25.
Total Burden hours: 256,234.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000-0018, telephone 202-501-4755. Please cite OMB Control No. 9000-0018, Certification of Independent Price Determination and Parent Company and Identifying Data, in all correspondence.

Dated: April 8, 2014.

Karlos Morgan,

Acting Director, Federal Acquisition Policy Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2014-08255 Filed 4-11-14; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Biodefense Science Board

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Biodefense Science Board (NBSB) will be holding a public meeting on April 29, 2014.

DATES: The April 29, 2014, NBSB public meeting is tentatively scheduled from 9:00 a.m. to 11:00 a.m. EST. The agenda is subject to change as priorities dictate. Please check the NBSB Web site, located

at WWW.PHE.GOV/NBSB, for the most up-to-date information on the meeting.

ADDRESSES: Thomas P. O'Neil Federal Office Building, 200 C Street SW Washington, DC 20024. To attend via teleconference, call toll-free 888-989-9728, international dial-in 1-517-308-9118, pass-code 5150747. Please call 15 minutes prior to the beginning of the conference call to facilitate attendance. Pre-registration is required for public attendance. Individuals who wish to attend the meeting in person should submit an inquiry via the NBSB Contact Form located at www.phe.gov/NBSBComments.

FOR FURTHER INFORMATION CONTACT:

Please submit an inquiry via the NBSB Contact Form located at www.phe.gov/NBSBComments.

SUPPLEMENTARY INFORMATION: Pursuant to section 319M of the Public Health Service Act (42 U.S.C. 247d-7f) and section 222 of the Public Health Service Act (42 U.S.C. 217a), HHS established the NBSB. The Board shall provide expert advice and guidance to the Secretary on scientific, technical, and other matters of special interest to HHS regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate. The Board may also provide advice and guidance to the Secretary and/or the Assistant Secretary for Preparedness and Response (ASPR) on other matters related to public health emergency preparedness and response.

Background: This public meeting will be dedicated to swearing in the six new voting members who will replace the members whose 3-year terms will expire on April 30, 2014. A portion of this meeting will be dedicated to the NBSB's deliberation and vote on the recommendations from the NBSB's Future of the NBSB Working Group. The NBSB will also deliberate and vote on a new task for the long term strategy that supports the ASPR and HHS in the context of preparedness and response. Subsequent agenda topics will be added as priorities dictate.

Availability of Materials: The meeting agenda and materials will be posted on the NBSB Web site at www.phe.gov/nbsb prior to the meeting.

Procedures for Providing Public Input: All written comments must be received prior to April 29, 2014. Please submit comments via the NBSB Contact Form located at www.phe.gov/NBSBComments. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should submit a request via the NBSB

Contact Form located at www.phe.gov/NBSBComments.

Dated: April 9, 2014.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2014-08427 Filed 4-11-14; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-14-14DF]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639-7570 or send an email to omb@cdc.gov. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395-5806. Written comments should be received within 30 days of this notice.

Proposed Project

Sexually Transmitted Infection Services at U.S. Colleges and Universities—New—National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Approximately 43% of the over 30 million 18-24 year olds in the United States are currently enrolled in college or graduate school. These institutions comprise a mix of 2-year and 4-year colleges, public and private institutions, technical schools, and community colleges. In the U.S. young adulthood is the peak age group for many risk behaviors including unprotected sex. College students, who are typically at the age of most risk for acquiring a sexually transmitted infection (STI), may face challenges when seeking sexual and reproductive health care on campus.

The last national study exploring the availability of STI services in U.S. colleges and universities (2- and 4-year) was conducted in 2001 and found that only 60% (474/736) of schools had a health center. Health centers were more common among larger schools (greater than 4,000 students) that were privately funded and 4-year universities with

housing. Of the health centers, 66% provided STI services, 55% provided obstetrical and gynecologic care, and 54% provided contraceptive services.

National Survey of Family Growth (NSFG) data estimates that the percentage of 18- to 22-year-olds ever tested for HIV is 34.2%; and only 18% reported being tested in the past year. Although risk factors for HIV/STI transmission (e.g., sex with multiple partners, unprotected sex, and using drugs or alcohol during sexual activity) can be particularly evident among college students in general, students enrolled at colleges with significant minority enrollment (SMEs) may face additional challenges such as greater risk of transmission during new sexual encounters due to sexual partner networks and limited access to quality healthcare and prevention education.

Given this information, there is a great deal of opportunity for expanding access to care, especially among schools which are unable to offer student health services on campus. Many schools, including both 2- and 4-year schools, may find it more difficult to offer student health services because of constrained budgets or geographical location. Depending on location, some may serve a disproportionate number of students from low socio-economic backgrounds. This means in general, their students are more likely to be un- or underinsured or to be Medicaid eligible.

CDC is requesting a one year OMB approval for this information collection. The purposes of this data collection are to (1) provide an estimate of the proportion of colleges not offering

health services on campus, (2) explore the reasons as to why health services are offered, and (3) describe the current extent of U.S. colleges and universities provisions of health services in regards to HIV/STI education, prevention and treatment.

The information will be used to provide technical assistance to colleges and universities interested in alternative solutions for providing health care services to their students.

The list of eligible respondents comes from the Integrated Postsecondary Education Data System (IPEDS), using 2011 enrollment data. Applying our criteria to include only active, 2- or 4-year, degree granting, accredited public or not for profit private schools, that enrolled at least 500 undergraduates and/or graduate students located in the 50 states and the District of Columbia our total population was 2,753 schools. Using stratified sampling, we sampled 885 universities and colleges to survey on their provision of health services as they relate to HIV & STI education, treatment and prevention.

CDC investigators will email an introductory letter inviting the contact person at each school to participate in the survey, noting that the questionnaire should be completed by the person with the most knowledge and access to information about health services on campus. For example, these persons would include Health services Directors or Campus Administrators. The estimated burden per respondent is approximately 45 minutes.

The questionnaire will collect information regarding various aspects of health services provided by the school.

These include requirements for student health insurance, preventive services, testing and treatment of HIV and STDs, partner management, and accessibility of health services by students. After signing and agreeing to terms outlined in the letter, confirming participation in the survey, another email with a link to the self-administered electronic questionnaire (via SurveyMonkey) will be sent. Schools will have three weeks to respond to the survey. Investigators will send a reminder at 1.5 weeks, 3 days prior to closeout, and then last day of data collection period. Once all the surveys are returned, two researchers will review and contact schools about inconsistent or invalid responses, and make corrections as needed. Basic school characteristics will be gathered from the IPEDs database on each school (e.g. institution type, funding type, size of enrollments, region, etc.).

The total estimated time frame for the project, including administration of the survey, collection period, data analysis and writing of findings is about 6–9 months. The results and findings will be written for publication in a peer-reviewed journal and an aggregated, summary report will be shared with all participating schools. This data collection effort will also allow investigators to provide technical assistance to colleges and universities interested in alternative solutions for providing health care services to their students. Participation is voluntary and there are no costs to respondents other than their time. The total annualized response burden is estimated at 664 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)
Health Services Personnel	College Survey	885	1	45/60

LeRoy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014-08300 Filed 4-11-14; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention****Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review**

The meeting announced below concerns Improving Access to Eye Care among Persons at High Risk of Glaucoma, FOA DP14-002, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 9:00 a.m.—6:00 p.m., EST, May 6, 2014 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to “Improving Access to Eye Care among Persons at High Risk of Glaucoma, FOA DP14-002, initial review.”

Contact Person for More Information: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F-80, Atlanta, Georgia 30341, Telephone: (770) 488-3585, EEO6@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Gary J. Johnson,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014-08307 Filed 4-11-14; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA-2013-N-1439]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Adverse Event Program for Medical Devices (Medical Product Safety Network)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 14, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or emailed to oir_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910-0471. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Adverse Event Program for Medical Devices (Medical Product Safety Network)—(OMB Control Number 0910-0471)—Extension

Among other things, section 519 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360i) authorizes FDA to require (1) manufacturers to report medical device-related deaths, serious injuries, and malfunctions, and (2) user facilities to report device-related deaths directly to manufacturers and FDA and serious injuries to the manufacturer. Section 213 of the Food and Drug

Administration Modernization Act of 1997 (Pub. L. 105-115) amended section 519(b) of the FD&C Act relating to mandatory reporting by user facilities of deaths, serious injuries, and serious illnesses associated with the use of medical devices. This amendment legislated the replacement of universal user facility reporting by a system that is limited to a “. . . subset of user facilities that constitutes a representative profile of user reports” for device-related deaths and serious injuries. This amendment is reflected in section 519(b)(5)(A) of the FD&C Act. This legislation provides FDA with the opportunity to design and implement a national surveillance network, composed of well-trained clinical facilities, to provide high-quality data on medical devices in clinical use. This system is called the Medical Product Safety Network (MedSun).

FDA is seeking OMB clearance to continue to use electronic data collection to obtain the information on Form FDA 3500A (approved under OMB control number 0910-0291) related to medical devices and tissue products from the user facilities participating in MedSun, to obtain a demographic profile of the facilities, and for additional questions which will permit FDA to better understand the cause of reported adverse events. Participation in the program is voluntary and currently includes 250 facilities.

In addition to collecting data on the electronic adverse event report form, MedSun collects additional information from participating sites about reported problems emerging from the MedSun hospitals. This data collection is also voluntary and is collected on the same Web site as the report information.

The burden estimate is based on the number of facilities currently participating in MedSun (250). FDA estimates an average of 15 reports per site annually. This estimate is based on MedSun working to promote reporting in general from the sites, as well as promoting reporting from specific parts of the hospitals, such as the pediatric intensive care units, the electrophysiology laboratories, and the hospital laboratories.

In the **Federal Register** of November 29, 2013 (78 FR 71620), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
MedSun facilities participating in the electronic reporting of adverse events program (Form FDA 3670)	250	15	3,750	0.75 (45 minutes)	2,813

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 7, 2014.
Leslie Kux,
Assistant Commissioner for Policy.
 [FR Doc. 2014-08212 Filed 4-11-14; 8:45 am]
BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2014-N-0001]

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 6 and 7, 2014, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel's telephone number is 301-977-8900.

Contact Person: Jamie Waterhouse, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301-796-3063, email: Jamie.Waterhouse@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web

site at <http://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On May 6, 2014, the committee will discuss, make recommendations, and vote on information related to the premarket approval application for the RESQCPR System sponsored by Advanced Circulatory Systems, Inc. The RESQCPR System is comprised of two devices: the RESQPOD 16.0 Impedance Threshold Device, and the RESQPUMP Active Compression Decompression CPR Device. These devices are used together during manual cardiopulmonary resuscitation (CPR) in an attempt to enhance venous return to the heart and blood flow to vital organs during CPR to ultimately increase survival and neurologic outcome in patients suffering from out of hospital cardiac arrest.

Advanced Circulatory Systems, Inc. has proposed the following indications for use: the RESQCPR System is intended for use in the performance of CPR to increase survival with favorable neurologic function in adult patients with non-traumatic cardiac arrest.

On May 7, 2014, during session I, the committee will discuss and make recommendations regarding the classification of membrane lung for long-term pulmonary support systems, one of the remaining preamendment Class III devices regulated under the 510(k) pathway. A membrane lung for long-term pulmonary support refers to the oxygenator component of an extracorporeal circuit used during long-term procedures, commonly referred to as extracorporeal membrane oxygenation (ECMO). An ECMO procedure provides assisted extracorporeal circulation and physiologic gas exchange of a patient's blood when an acute (reversible) condition prevents the patient's own body from providing the physiologic gas exchange needed to sustain life. The circuit is comprised of multiple device types, including, but not limited to, an oxygenator, blood pump, cannulae, heat

exchanger, tubing, filters, monitors/detectors, and other accessories; the circuit components and configuration (e.g., arteriovenous, veno-venous) may differ based on the needs of the individual patient or the condition being treated. ECMO is currently used for patients with acute reversible respiratory or cardiac failure, unresponsive to optimal ventilation and/or pharmacologic management.

On January 8, 2013 the FDA issued a proposed order which, if made final, would make the class III ECMO devices class II subject to premarket notification (510(k)) and special controls. FDA discussed the regulatory history of ECMO devices as part of the proposed order. On September 12, 2013, the classification of ECMO was discussed at a meeting of the Circulatory System Devices Panel. The Panel agreed with FDA's proposal to reclassify ECMO to class II (special controls) as outlined in the January 8, 2013, proposed order, but recommended that a panel be reconvened to discuss use of ECMO in an adult patient population as the September 12, 2013, panel meeting was focused on the use of ECMO in a pediatric patient population.

The discussion at this panel meeting will involve making recommendations regarding regulatory classification to either reconfirm to class III (subject to premarket approval application (PMA)) or reclassify to class II and comment on whether special controls are adequate to assure the safety and effectiveness of this device in an adult patient population.

On May 7, 2014, during session II, the committee will discuss and make recommendations regarding the classification of More-than-Minimally Manipulated Allograft Heart Valves (MMM Allograft HVs). An MMM Allograft HV is a human valve or valved-conduit that has been aseptically recovered from qualified donors, dissected free from the human heart, and then subjected to a manufacturing process(es) which alters the original relevant characteristics of the tissue (cf. 21 CFR 1271.3(f), 21 CFR 1271.10(a)(1), and 21 CFR 1271.20). The valve is then stored until needed by a recipient. An

example of such a manufacturing process is one which intentionally removes the cells and cellular debris, with the goal of reducing in vivo antigenicity.

MMM Allograft HVs are considered preamendment devices because they were found substantially equivalent to devices in commercial distribution prior to May 28, 1976, when the Medical Device Amendments became effective. MMM Allograft HVs are currently regulated under the heading of "Heart Valve, More than Minimally Manipulated Allograft", Product Code OHA, as unclassified devices and reviewed under the premarket notification, 510(k), authority. FDA is seeking committee input on the safety and effectiveness of MMM Allograft HVs and the regulatory classification for MMM Allograft HVs.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 28, 2014. On May 6, oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. On May 7, oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10 a.m. for session I and between 2 p.m. and 2:30 p.m. for session II. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 18, 2014. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public

hearing session. The contact person will notify interested persons regarding their request to speak by April 21, 2014.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact James Clark, Conference Management Staff, at James.Clark@fda.hhs.gov or 301-796-5293 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 4, 2014.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2014-08198 Filed 4-11-14; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2014-N-0314]

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 13, 2014, from 8 a.m. to 6 p.m.

Location: Holiday Inn Express/ Highlands Conference Center, Oak I and

II Conference Rooms, 20260 Goldenrod Lane, Germantown, MD 20876. The hotel's phone number is 301-605-1434.

Contact Person: Natasha Facey, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1552, Silver Spring, MD 20993, 301-796-5290, Natasha.Facey@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at <http://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On May 13, 2014, the committee will discuss and make recommendations regarding the guidance documents for contact lenses and contact lens accessories. The guidance for contact lenses entitled "Premarket Notification [510(k)] Guidance Document for Class II Daily Wear Contact Lenses" and can be found at: <http://www.fda.gov/medicaldevices/deviceregulationandguidance/documents/ucm080928.htm>. The guidance for contact lens accessories entitled "Premarket Notification [510(k)] Guidance Document for Contact Lens Care Products" and can be found at: <http://www.fda.gov/downloads/medicaldevices/deviceregulationandguidance/guidancedocuments/ucm080218.pdf>. The discussion will include topics such as microbiological and chemical pre-clinical testing, revision of pre-clinical test requirements to address patient non-compliance, modification of rigid gas permeable lens care regimens, and labeling for these devices.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 6, 2014. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on May 13, 2014. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 25, 2014. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 29, 2014.

FDA is opening a docket for public comment on this document. The docket number is FDA-2014-N-0314. The docket will close on May 23, 2014. Interested persons are encouraged to use the docket to submit electronic or written comments regarding this meeting. Comments received on or before May 6, 2014, will be provided to the committee. Comments received after that date will be taken into consideration by the Agency. Submit electronic comments on this meeting to <http://www.regulations.gov> or written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Divisions of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

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5293 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 7, 2014.

Jill Hartzler Warner,
Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2014-08217 Filed 4-11-14; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps (NHSC).

Dates and Times: April 24, 2014, 2:00 p.m.–3:30 p.m. (EST).

Place: The meeting will be via audio conference call.

Status: The meeting will be open to the public.

Agenda: The Council is holding a meeting via conference call to provide program updates and discuss the potential growth of the National Health Service Corps. The public can join the meeting via audio conference call on the date and time specified above using the following information: Dial-in number: 1-800-779-9073; Passcode: 1551759. There will be an opportunity for the public to comment towards the end of the call. An unforeseen administrative error hindered an earlier publication of this meeting notice.

FOR FURTHER INFORMATION CONTACT: Ed Mekeel, Bureau of Clinician Recruitment and Service, Health Resources and Services Administration, Parklawn Building, Room 13-64, 5600 Fishers Lane, Rockville, Maryland 20857; email: emekeel@hrsa.gov; telephone: 301-443-6156.

Dated: April 8, 2014.

Jackie Painter,
Deputy Director, Division of Policy and Information Coordination.

[FR Doc. 2014-08267 Filed 4-11-14; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recruitment of Sites for Assignment of Corps Personnel Obligated Under the National Health Service Corps Scholarship Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: General notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that the listing of entities and associated Health Professional Shortage Area (HPSA) scores that will receive priority for the assignment of National Health Service Corps (NHSC) scholarship recipients serving as Corps members, as well as those serving under the Private Practice Option ("NHSC scholars" collectively), during the period July 1, 2014, through September 30, 2015, is posted on the NHSC Web site at <http://nhscjobs.hrsa.gov>. The NHSC Jobs Center includes all sites that are approved for performance of service by NHSC scholars; however, note that entities on this list may or may not have current job vacancies.

Eligible HPSAs and Entities

To be eligible to receive assignment of Corps members, entities must: (1) Have a current HPSA status of "designated" by the Division of Policy and Shortage Designation, Bureau of Clinician Recruitment and Service, HRSA, as of January 1, 2014, for placements July 1, 2014, through December 31, 2014, or January 1, 2015, for placements January 1, 2015, through September 30, 2015; (2) not deny requested health care services, or discriminate in the provision of services to an individual because the individual is unable to pay for the services or because payment for the services would be made under Medicare, Medicaid, or the Children's Health Insurance Program (CHIP); (3) enter into an agreement with the state agency that administers Medicaid and CHIP, accept assignment under Medicare, see all patients regardless of their ability to pay and post such policy, and use and post a discounted fee plan; and (4) be determined by the Secretary to have (a) a need and demand for

health manpower in the area; (b) appropriately and efficiently used Corps members assigned to the entity in the past; (c) general community support for the assignment of Corps members; (d) made unsuccessful efforts to recruit; (e) a reasonable prospect for sound fiscal management by the entity with respect to Corps members assigned there; and (f) demonstrated a willingness to support and facilitate mentorship, professional development, and training opportunities for Corps members.

Priority in approving applications for assignment of Corps members goes to sites that (1) provide primary medical care, mental health, and/or oral health services to a primary medical care, mental health, or dental HPSA of greatest shortage, respectively; (2) are part of a system of care that provides a continuum of services, including comprehensive primary health care and appropriate referrals (e.g. ancillary, inpatient, and specialty referrals) or arrangements for secondary and tertiary care; (3) have a documented record of sound fiscal management; (4) will experience a negative impact on their capacity to provide primary health services if a Corps member is not assigned to the entity, and (5) are a nonprofit or public entity to which Corps members may be assigned. Sites that provide specialized care, or a limited set of services, will receive greater scrutiny and may not receive approval as NHSC service sites. This may include clinics that focus on one disease or disorder or offer limited services, such as a clinic that only provides immunizations or a substance abuse clinic.

Entities at which NHSC scholars are performing their service obligations must assure that (1) the position will permit the full scope of practice and that the clinician meets the credentialing requirements of the state and site; and (2) the NHSC scholar assigned to the entity is engaged in the requisite amount of clinical practice, as defined below, to meet his or her service obligation:

Full-Time Clinical Practice

“Full-time clinical practice” is defined as a minimum of 40 hours per week for at least 45 weeks per service year. The 40 hours per week may be compressed into no less than 4 work days per week, with no more than 12 hours of work to be performed in any 24-hour period. Time spent on-call does not count toward the full-time service obligation, except to the extent the provider is directly treating patients during that period.

For all health professionals, except as noted below, at least 32 of the minimum 40 hours per week must be spent providing direct patient care in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s) during normally scheduled office hours. The remaining 8 hours per week must be spent providing clinical services for patients or teaching in the approved practice site(s), providing clinical services in alternative settings as directed by the approved practice site(s), or performing practice-related administrative activities. Teaching activities at the approved service site shall not exceed 8 hours of the minimum 40 hours per week, unless the teaching takes place in a HRSA-funded Teaching Health Center (see Section 340H of the Public Health Service Act, 42 U.S.C. Section 256h). Teaching activities in a HRSA-funded Teaching Health Center shall not exceed 20 hours of the minimum 40 hours per week.

For obstetrician/gynecologists, certified nurse midwives, family medicine physicians who practice obstetrics on a regular basis, providers of geriatric services, pediatric dentists, and behavioral/mental health providers, at least 21 of the minimum 40 hours per week must be spent providing direct patient care in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s), during normally scheduled office hours. The remaining 19 hours per week must be spent providing clinical services for patients or teaching in the approved practice site(s), providing clinical services in alternative settings as directed by the approved practice site(s), or performing practice-related administrative activities. No more than 8 hours per week can be spent performing practice-related administrative activities. Teaching activities at the approved service site shall not exceed 8 hours of the minimum 40 hours per week, unless the teaching takes place in a HRSA-funded Teaching Health Center. Teaching activities in a HRSA-funded Teaching Health Center shall not exceed 20 hours of the minimum 40 hours per week.

For physicians (including psychiatrists), physician assistants, nurse practitioners (including those specializing in psychiatry or mental health), and certified nurse midwives serving in a Critical Access Hospital (CAH) that is certified by the Centers for Medicare and Medicaid Services (CMS) as a CAH under section 1820 of the Social Security Act, the full-time service requirements are as follows: At least 16 of the minimum 40 hours per week must be spent providing direct patient

care in the CAH-affiliated outpatient ambulatory care setting(s) specified in the NHSC’s Customer Service Portal, during normally scheduled office hours. The remaining 24 hours of the minimum 40 hours per week must be spent providing direct patient care for patients or teaching at the CAH(s) or the CAH-affiliated outpatient ambulatory care setting specified in the Customer Service Portal, providing direct patient care in the CAH’s skilled nursing facility or swing bed unit, or performing practice-related administrative activities. No more than 8 hours per week can be spent on practice-related administrative activities. Teaching activities at the approved service site(s) shall not exceed 8 hours of the minimum 40 hours per week, unless the teaching takes place in a HRSA-funded Teaching Health Center (see Section 340H of the Public Health Service Act, 42 U.S.C Section 256h). Teaching activities in a HRSA-funded Teaching Health Center shall not exceed 20 hours of the minimum 40 hours per week.

Half-Time Clinical Practice

“Half-time clinical practice” is defined as a minimum of 20 hours per week (not to exceed 39 hours per week), for at least 45 weeks per service year. The 20 hours per week may be compressed into no less than 2 work days per week, with no more than 12 hours of work to be performed in any 24-hour period. Time spent on-call does not count toward the half-time service obligation, except to the extent the provider is directly treating patients during that period.

For all health professionals, except as noted below, at least 16 of the minimum 20 hours per week must be spent providing direct patient care in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s), during normally scheduled office hours. The remaining 4 hours per week must be spent providing clinical services for patients or teaching in the approved practice site(s), providing clinical services in alternative settings as directed by the approved practice site(s), or performing practice-related administrative activities. Teaching and practice-related administrative activities shall not exceed a total of 4 hours of the minimum 20 hours per week.

For obstetrician/gynecologists, certified nurse midwives, family medicine physicians who practice obstetrics on a regular basis, providers of geriatric services, pediatric dentists, and behavioral/mental health providers, at least 11 of the minimum 20 hours per week must be spent providing direct patient care in the outpatient

ambulatory care setting(s) at the NHSC-approved service site(s), during normally scheduled office hours. The remaining 9 hours per week must be spent providing clinical services for patients or teaching in the approved practice site(s), providing clinical services in alternative settings as directed by the approved practice site(s), or performing practice-related administrative activities. Teaching and practice-related administrative activities shall not exceed 4 hours of the minimum 20 hours per week.

For physicians (including psychiatrists), physician assistants, nurse practitioners (including those specializing in psychiatry or mental health), and certified nurse midwives serving in a Critical Access Hospital (CAH), the half-time service requirements are as follows: At least 8 of the minimum 20 hours per week must be spent providing direct patient care in the CAH-affiliated outpatient ambulatory care setting(s) specified in the Customer Service Portal, during normally scheduled office hours. The remaining 12 hours of the minimum 20 hours per week must be spent providing direct patient care for patients or teaching at the CAH(s) or the CAH-affiliated outpatient ambulatory care setting specified in the Practice Agreement, providing direct patient care in the CAH's skilled nursing facility or swing bed unit, or performing practice-related administrative activities. Teaching and practice-related administrative activities shall not exceed 4 hours of the minimum 20 hours per week.

Half-time clinical practice is not an option for scholars serving their obligation through the Private Practice Option.

In addition to utilizing NHSC scholars in accordance with their full-time or half-time service obligation (as defined above), NHSC service sites are expected to: (1) Report to the NHSC all absences, including those in excess of the authorized number of days (up to 35 full-time days per service year in the case of full-time service and up to 35 half-time days per service year in the case of half-time service); (2) report to the NHSC any change in the status of an NHSC clinician at the site; (3) provide the time and leave records, schedules, and any related personnel documents for NHSC scholars (including documentation, if applicable, of the reason(s) for the termination of an NHSC clinician's employment at the site prior to his or her obligated service end date); and (4) submit an NHSC Site Survey, or a Uniform Data System (UDS) report in the case of entities receiving

HRSA grant support under Section 330 of the Public Health Service Act. The Site Survey or UDS report, as applicable, requires the site to assess the age, sex, race/ethnicity of, and provider encounter records for, its user population and are site specific. Providers fulfilling NHSC commitments are approved to serve at a specific site or, in some cases, more than one site. The scope of activity to be reported in the survey includes all activity at the site(s) at which the NHSC scholar is serving.

Evaluation and Selection Process

In order for a site to be eligible for placement of NHSC scholars, it must be approved by the NHSC following the site's submission of a Site Application. Processing of site applications from solo or group practices will involve additional screening, including a site visit by NHSC representatives. The Site Application approval is good for a period of 3 years from the date of approval.

In approving applications for the assignment of Corps members, the Secretary shall give priority to any such application that is made regarding the provision of primary health services to a HPSA with the greatest shortage. For the program year July 1, 2014, through September 30, 2015, HPSAs of greatest shortage for determination of priority for assignment of NHSC scholarship-obligated Corps personnel will be defined as follows: (1) Primary medical care HPSAs with scores of 14 and above are authorized for the assignment of NHSC scholars who are primary care physicians, family nurse practitioners, physician assistants, or certified nurse midwives; (2) mental health HPSAs with scores of 14 and above are authorized for the assignment of NHSC scholars who are psychiatrists or mental health nurse practitioners; and (3) dental HPSAs with scores of 14 and above are authorized for the assignment of NHSC scholars who are dentists. The NHSC has determined that a minimum HPSA score of 14 for all service-ready NHSC scholars will enable it to meet its statutory obligation to identify a number of entities eligible for placement at least equal to, but not greater than twice the number of NHSC scholars available to serve in the 2014–2015 placement cycle.

The number of new NHSC placements through the Scholarship Program allowed at any one site is limited to one (1) of the following provider types: Physician (MD/DO), nurse practitioner, physician assistant, certified nurse midwife, or dentist. The NHSC will consider requests for up to two (2) scholar placements at any one site on a

case by case basis. Factors that are taken into consideration include community need, as measured by demand for services, patient outcomes and other similar factors. Sites wishing to request an additional scholar must complete an Additional Scholar Request form available at <http://nhsc.hrsa.gov/downloads/additionalrequestform.pdf>.

NHSC-approved sites that do not meet the authorized threshold HPSA score of 14 may post job openings on the NHSC Jobs Center; however, scholars seeking placement between July 1, 2014 and September 30, 2015, will be advised that they can only compete for open positions at sites that meet the threshold placement HPSA score of 14. While not eligible for scholar placements in 2014–2015, vacancies in HPSAs scoring less than 14 will be used by the NHSC in evaluating the HPSA threshold score for the next scholarship placement cycle.

Application Requests, Dates and Address

The list of HPSAs and entities that are eligible to receive priority for the placement of NHSC scholars may be updated periodically. New entities may be added to the NHSC Jobs Center during a Site Application competition. Likewise, entities that no longer meet eligibility criteria, including those sites whose 3-year approval as an NHSC service site has lapsed or whose HPSA designation has been withdrawn or proposed for withdrawal, will be removed from the priority listing.

Additional Information

Entities wishing to provide additional data and information in support of their inclusion on the proposed list of entities that would receive priority in assignment of scholarship-obligated Corps members, or in support of a higher priority determination, must do so in writing no later than May 14, 2014. This information should be submitted to: Beth Dillon, Director, Division of Regional Operations, Bureau of Clinician Recruitment and Service, 999 18th Street, Denver, Colorado 80202. This information will be considered in preparing the final list of entities that are receiving priority for the assignment of scholarship-obligated Corps personnel.

The program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: April 4, 2014.
Mary K. Wakefield,
Administrator.
 [FR Doc. 2014-08264 Filed 4-11-14; 8:45 am]
BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; National Institutes of Health Loan Repayment Programs

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Division of Loan Repayment, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 31, 2014 and page numbers 5440-5441, and allowed 60-days for public comment. One public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202-395-6974, Attention: NIH Desk Officer.

DATES: Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Steve Boehlert, Director of Operations, Division of Loan Repayment, National Institutes of Health, 6011 Executive Blvd., Room 206 (MSC 7650), Bethesda, Maryland 20892-7650. Steve may be contacted via email at *BoehlersS@od.nih.gov* or by calling 301-451-4465. Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: National Institutes of Health Loan Repayment Programs. Type of Information Collection Request: Extension of a currently approved collection (OMB No. 0925-0361, expiration date 06/30/14). Form Numbers: NIH 2674-1, NIH 2674-2, NIH 2674-3, NIH 2674-4, NIH 2674-5, NIH 2674-6, NIH 2674-7, NIH 2674-8, NIH 2674-9, NIH 2674-10, NIH 2674-11, NIH 2674-12, NIH 2674-13, NIH 2674-14, NIH 2674-15, NIH 2674-16, NIH 2674-17, NIH 2674-18, and NIH 2674-19.

Need and Use of Information Collection: The NIH makes available financial assistance, in the form of educational loan repayment, to M.D., Ph.D., Pharm.D., D.D.S., D.M.D., D.V.M., D.P.M., DC, and N.D. degree holders, or the equivalent, who perform biomedical or behavioral research in NIH intramural laboratories or as extramural grantees or scientists funded by domestic non-profit organizations for a minimum of 2 years (3 years for the General Research LRP) in research areas supporting the mission and priorities of the NIH.

The AIDS Research Loan Repayment Program (AIDS-LRP) is authorized by

Section 487A of the Public Health Service Act (42 U.S.C. 288-1); the Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (CR-LRP) is authorized by Section 487E (42 U.S.C. 288-5); the General Research Loan Repayment Program (GR-LRP) is authorized by Section 487C of the Public Health Service Act (42 U.S.C. 288-3); the Clinical Research Loan Repayment Program (LRP-CR) is authorized by Section 487F (42 U.S.C. 288-5a); the Pediatric Research Loan Repayment Program (PR-LRP) is authorized by Section 487F (42 U.S.C. 288-6); the Extramural Clinical Research LRP for Individuals from Disadvantaged Backgrounds (ECR-LRP) is authorized by an amendment to Section 487E (42 U.S.C. 288-5); the Contraception and Infertility Research LRP (CIR-LRP) is authorized by Section 487B (42 U.S.C. 288-2); and the Health Disparities Research Loan Repayment Program (HD-LRP) is authorized by Section 485G (42 U.S.C. 287c-33).

The Loan Repayment Programs can repay up to \$35,000 per year toward a participant's extant eligible educational loans, directly to financial institutions. The information proposed for collection will be used by the Division of Loan Repayment to determine an applicant's eligibility for participation in the program.

Frequency of Response: Initial application and one or two-year renewal application.

Affected Public: Individuals or households; Nonprofits; and Businesses or other for-profit.

Type of Respondents: Physicians, other scientific or medical personnel, and institutional representatives.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 34,925.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Estimated number of responses per respondent	Average burden hours per response	Annual burden hours requested
Intramural LRPs:				
Initial Applicants	20	1	10	200
Advisors/Supervisors	20	1	1	20
Recommenders	60	1	30/60	30
Subtotal	100	.....	.....	250
Extramural LRPs:				
Initial Applicants	1,800	1	11	19,800
Advisors/Supervisors	1,600	1	1	1,600
Recommenders	5,400	1	30/60	2,700

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Number of respondents	Estimated number of responses per respondent	Average burden hours per response	Annual burden hours requested
Subtotal	8,800	.....	.....	24,100
Intramural LRP:				
Renewal Applicants	40	1	7	280
Advisors/Supervisors	40	1	2	80
Subtotal	80	.....	.....	360
Extramural LRPS:				
Renewal Applicants	930	1	8	7,440
Advisors/Supervisors	690	1	2	1,380
Recommenders	2,790	1	30/60	1,395
Subtotal	4,410	.....	.....	10,215

Dated: April 8, 2014.
Steve Boehlert,
Project Clearance Liaison, Director of Operations, Division of Loan Repayment, NIH.
 [FR Doc. 2014-08327 Filed 4-11-14; 8:45 am]
BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH/NICHD/Brain and Tissue Repository Contract Review.

Date: April 23, 2014.
Time: 2:00 p.m. to 5:00 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: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience

Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892-9606, 301-443-1606, *charlesvi@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS).

Dated: April 8, 2014.
Carolyn A. Baum,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014-08274 Filed 4-11-14; 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 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 materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Identification of Gene Variants for Addiction Related Traits by Next-Gen Sequencing in Model Organisms Selectively Bred for Addiction Traits (UH2/UH3).

Date: April 24, 2014.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jagadeesh S. Rao, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4234, MSC 9550, Bethesda, MD 02892, 301-443-9511, *jrao@nida.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Multi-site Clinical Trials.

Date: May 14, 2014.
Time: 11:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301-402-6020, *hiromi.ono@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Pilot Intervention and Services Research Grants (R34).

Date: June 10, 2014.
Time: 11:00 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Nadine Rogers, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive

Blvd., Room 4229, MSC 9550, Bethesda, MD 20892-9550, 301-402-2105, rogersn2@nida.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS).

Dated: April 8, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014-08272 Filed 4-11-14; 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 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 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 SBIR Phase II: An In-situ Opioid Drug Deactivation Kit for Home Use (4418).

Date: April 25, 2014.

Time: 1:00 p.m. to 2:00 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: Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892-9550, (301) 451-3086, ruizjf@nida.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; SBIR Phase II: At-Home Deactivation (4421).

Date: April 25, 2014

Time: 2:00 p.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: Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892-9550, (301) 451-3086, uizjf@nida.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; SBIR Phase II Relapse Prevention (4417 & 4419).

Date: April 30, 2014.

Time: 1:00 p.m. to 4:00 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: Nadine Rogers, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4229, MSC 9550, Bethesda, MD 20892-9550, 301-402-2105, rogersn2@nida.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; GMP Synthesis of Bulk Drug Substances (8915).

Date: May 28, 2014.

Time: 10:00 a.m. to 1:00 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: April 8, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014-08270 Filed 4-11-14; 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 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 Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 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 Council on Drug Abuse.

Date: May 6-7, 2014.

Closed: May 6, 2014, 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Rooms C & D, Rockville, MD 20852.

Open: May 7, 2014, 8:30 a.m. to 2:30 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Rooms C & D, Rockville, MD 20852.

Contact Person: Mark Swieter, Ph.D., Acting Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4243, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892-9550, (301) 435-1389, ms80x@nih.gov.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their 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.drugabuse.gov/NACDA/NACDAHome.html, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS).

Dated: April 8, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014-08271 Filed 4-11-14; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Child Health and Human Development Special Emphasis Panel, April 22, 2014, 2:00 p.m. to April 22, 2014, 4:00 p.m., National Institutes of Health, 6100 Executive Boulevard, Rockville, MD, 20852 which was published in the **Federal Register** on March 27, 2014, 79 FR 17169. The meeting notice is amended to change the date of the meeting from April 22, 2014 to April 23, 2014. The meeting is closed to the public.

Dated: April 8, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014-08273 Filed 4-11-14; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2010-0164]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) will meet on May 8-9, 2014, in Arlington, VA, to discuss issues relating to recreational boating safety. The meetings will be open to the public.

DATES: NBSAC will meet Thursday, May 8, 2014, from 9:00 a.m. to 5:00 p.m. and Friday, May 9, 2014, from 9:00 a.m. to 12:00 p.m. Please note that the meetings may conclude early if NBSAC has completed all business.

ADDRESSES: The meeting will be held in the Ballroom of the Holiday Inn Arlington (<http://www.hiarlington.com>), 4610 N Fairfax Drive, Arlington, VA 22203.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Jeff Ludwig, Alternate Designated Federal Officer (ADFO), telephone 202-372-1061, or at Jeffrey.a.ludwig@uscg.mil.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the "Agenda" section below. Written comments for distribution to Council members must be submitted no later than April 30, 2014, and must be identified by (USCG-2010-0164) and may be submitted by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments (preferred method to avoid delays in processing).

- Fax: (202) 372-1908.
- Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

- Hand Delivery: Same as mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided. You may review a Privacy Act notice regarding public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to this notice, go to <http://www.regulations.gov>, enter the docket number in the "Search" field and follow instructions on the Web site.

Public oral comment periods will be held each day. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment periods may end before the time indicated, following the last call for

comments. Contact Mr. Jeffrey Ludwig as indicated below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Ludwig, ADFO for NBSAC, telephone (202) 372-1061, or at jeffrey.a.ludwig@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act* (FACA), 5 U.S.C. Appendix 2. Congress established NBSAC in the *Federal Boat Safety Act of 1971* (Pub. L. 92-75). NBSAC currently operates under the authority of 46 U.S.C. 13110, which requires the Secretary of Homeland Security and the Commandant of the Coast Guard by delegation to consult with NBSAC in prescribing regulations for recreational vessels and associated equipment, and on other major safety matters. See 46 U.S.C. 4302(c) and 13110(c).

Meeting Agenda

The agenda for the NBSAC meeting is as follows:

Thursday, May 8, 2014

(1) Opening Remarks, Swearing-In of New Members and Presentation of Awards to Outgoing Members.

(2) Receipt and discussion of the following reports:

(a) Chief, Office of Auxiliary and Boating Safety, Update on the Coast Guard's implementation of NBSAC Resolutions and Recreational Boating Safety Program report.

(b) Alternate Designated Federal Officer's report concerning Council administrative and logistical matters.

(3) Presentation and discussion on the Uniform Certificate of Title Act—Vessel (UCOTA-V).

(4) Presentation and discussion on the Coast Guard's life jacket carriage requirements and exemptions found in 33 CFR 175.

(5) Presentation and discussion on the Coast Guard's progress in implementing NBSAC's Recommendation Regarding the Development of New Life Jacket Standards and Approval Processes for Life Jackets.

(6) Receipt and Discussion of the Strategic Planning Subcommittee report.

(7) Public comment.

Friday, May 9, 2014

(1) Receipt and Discussion of the Boats and Associated Equipment and Prevention through People Subcommittee reports.

(2) Discussion of any recommendations to be made to the Coast Guard.

(3) Public comment period.

There will be a comment period for NBSAC and a comment period for the public after each subcommittee report, but before each recommendation is formulated. The Council will review the information presented on each issue, deliberate on any recommendations presented in the subcommittee reports, and formulate recommendations for the Department's consideration.

A more detailed agenda and all meeting documentation can be found at: <http://homeport.uscg.mil/NBSAC>, no later than April 23, 2014. Alternatively, you may contact Mr. Jeff Ludwig as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: April 8, 2014.

Jonathan C. Burton,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2014-08371 Filed 4-11-14; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE-2014-0004; OMB Control Number 1014-0018; 14XE1700DX EEEE500000 EX1SF0000.DAQ000]

Information Collection Activities: Oil and Gas Drilling Operations; Proposed Collection; Comment Request

ACTION: 60-day Notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a revision to the paperwork requirements in the regulations under Subpart D, *Oil and Gas Drilling Operations*.

DATES: You must submit comments by June 13, 2014.

ADDRESSES: You may submit comments by either of the following methods listed below.

- Electronically go to <http://www.regulations.gov>. In the Search box, enter BSEE-2014-0004 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.

- Email cheryl.blundon@bsee.gov. Mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Cheryl Blundon; 381 Elden Street, HE3313; Herndon, Virginia 20170-4817. Please reference ICR 1014-0018 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787-1607 to request additional information about this ICR.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart D, *Oil and Gas Drilling Operations*.

Form(s): BSEE-0123, -0123S, -0124, -0125, -0133, -0133S, and -0144.

OMB Control Number: 1014-0018.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

In addition to the general rulemaking authority of the OCS Lands Act at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or

submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to the Bureau of Safety and Environmental Enforcement (BSEE), 30 U.S.C. 1751 is included as additional authority for these requirements.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104-133, 110 Stat. 1321, April 26, 1996), and OMB Circular A-25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, BSEE is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that accrue to the public at large. Well operation applications and reports are subject to cost recovery, and BSEE regulations specify service fees for these requests.

Regulations implementing these responsibilities are among those delegated to BSEE. This request also covers any related Notices to Lessees and Operators (NLTs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations. The regulations under 30 CFR 250, Subpart D, pertain to governing oil and gas production, associated forms, and related Notices to Lessees (NLTs) and Operators. We use the information to ensure safe drilling operations and to protect the human, marine, and coastal environment. Among other things, BSEE specifically uses the information to ensure: The drilling unit is fit for the intended purpose; the lessee or operator will not encounter geologic conditions that present a hazard to operations; equipment is maintained in a state of readiness and meets safety standards; each drilling crew is properly trained and able to promptly perform well-control activities at any time during well operations; compliance with safety standards; and the current regulations will provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether drilling operations have encountered hydrocarbons or H₂S and to ensure that H₂S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H₂S and zones where the presence of H₂S is unknown.

This ICR includes several forms. In this submission, we have included a certification statement on all the forms to state that false submissions are subject to criminal penalties. Additional minor changes to the forms are as follows:

Form BSEE-0123

Question #17—facility name was added;

Question #25—revised the citations for accuracy;

Question #33—added a new question relating to digital BOP testing.

Form BSEE-0124

Question #18 updated the regulatory citations.

Form BSEE-0125

Question #34(a) Bottomhole Pressure (PSI), and

Question #34(b) Bottomhole Temperature (°F).

Form BSEE-0144

Included Alaska and Pacific OCS Region contact information.

Once this IC collection is approved, the revisions will be added to the forms and the eWell screen shot(s); the revised PRA statement will be posted on the eWell Web site.

The forms use and information consist of the following:

Application for Permit To Drill, BSEE-0123 and -0123S

The BSEE uses the information from these forms to determine the conditions of a drilling site to avoid hazards inherent in drilling operations. Specifically, we use the information to evaluate the adequacy of a lessee's or operator's plan and equipment for drilling, sidetracking, or deepening operations. This includes the adequacy of the proposed casing design, casing setting depths, drilling fluid (mud) programs, and cementing programs to ascertain that the proposed operations will be conducted in an operationally safe manner that provides adequate protection for the environment. The BSEE also reviews the information to ensure conformance with specific provisions of the lease. In addition, except for proprietary data, BSEE is required by the OCS Lands Act to make available to the public certain information submitted on Forms 0123 and 0123S.

Application for Permit To Modify, BSEE-0124

The information on this form is used to evaluate and approve the adequacy of

the equipment, materials, and/or procedures that the lessee or operator plans to use during drilling plan modifications, changes in major drilling equipment, and plugging back. In addition, except for proprietary data, BSEE is required by the OCS Lands Act to make available to the public certain information submitted on Form 0124.

End of Operations Report, BSEE-0125

This information is used to ensure that industry has accurate and up-to-date data and information on wells and leasehold activities under their jurisdiction and to ensure compliance with approved plans and any conditions placed upon a suspension or temporary prohibition. It is also used to evaluate the remedial action in the event of well equipment failure or well control loss. The Form BSEE-0125 is updated and resubmitted in the event the well status changes. In addition, except for proprietary data, BSEE is required by the OCS Lands Act to make available to the public certain information submitted on BSEE-0125.

Well Activity Report, BSEE-0133 and -0133S

The BSEE uses this information to monitor the conditions of a well and status of drilling operations. We review the information to be aware of the well conditions and current drilling activity (i.e., well depth, drilling fluid weight, casing types and setting depths, completed well logs, and recent safety equipment tests and drills). The engineer uses this information to determine how accurately the lessee anticipated well conditions and if the lessee or operator is following the approved Application for Permit to Drill (BSEE-0123). The information is also used for review of an APM (BSEE-0124). With the information collected on BSEE-0133 available, the reviewers can analyze the proposed revisions (e.g., revised grade of casing or deeper casing setting depth) and make a quick and informed decision on the request.

Rig Movement Notification Report, Form BSEE-0144

As activity increased over the years in the Gulf of Mexico (GOM), the rig notification requirement became essential for BSEE inspection scheduling and has become a standard condition of approval for certain permits. The BSEE needs the information on BSEE-0144 to schedule inspections and verify that the equipment being used complies with approved permits. In reporting rig

movements respondents have the option of submitting the form or using a web-based system for electronic data submissions. The information on this form is used primarily in the GOM to ascertain the precise arrival and departure of all rigs in OCS waters in the GOM. The accurate location of these rigs is necessary to facilitate the scheduling of inspections by BSEE personnel.

It is noted that the U.S. Coast Guard (USCG) also requires notification of rig movement and that there is some duplication of information reported. Since we do not need this information however this does address USCG information. These optional data elements in the form satisfy any concerns in reporting rig movement information to both BSEE and the USCG.

We will protect personally identifiable information about individuals according to the Privacy Act (5 U.S.C. 552a) and DOIs implementing regulations (43 CFR 2). We protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR 2); 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection*; and 30 CFR part 252, *OCS Oil and Gas Information Program*. Responses are mandatory or are required to obtain or retain a benefit.

Frequency: Responses are submitted generally on occasion, monthly, semi-annually, annually, and as a result of situations encountered depending upon the requirements.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 216,211 hours. In this submission, we are requesting a total of 208,603 burden hours based on new estimates. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BILLING CODE 4310-VH-P

Burden Table

Citation 30 CFR 250, Subpart D, and NTL(s)	Reporting and Recordkeeping Requirement*	Hour Burden	Average No. of Annual Responses	Annual Burden Hours (rounded)
General Requirements				
402(b)	Request approval to use blind or blind-shear ram or pipe rams and inside BOP.	0.5	352 requests	176
403	Notify BSEE of drilling rig movement on or off drilling location.	0.1	161 notices	17
	In GOM, rig movements reported on BSEE-0144.	0.2	151 forms	31
404	Perform operational check of crown block safety device; record results (weekly).	0.25	86 drilling rigs x 52 weeks = 4,472	1,118
408, 409	Apply for use of alternative procedures and/or departures not requested in BSEE forms (including discussions with BSEE or oral approvals).	Burden covered under 1014-0022.		0
Subtotal			5,136 Responses	1,342 Hours
Apply for a Permit to Drill				
408; 409; 410-418, 420(a)(6); 423(b)(3), (c); 449(j), (k); 456(j); various references in subparts A, B, D, E, H, P, Q.	Apply for permit to drill APD (Form BSEE-0123) that includes any/all supporting documentation /evidence [including, but not limited to, test results, calculations, pressure integrity, verifications, procedures, criteria, qualifications, etc.] and requests for various approvals required in subpart D (including §§ 250.424, 425, 427, 428, 432, 442(c), 447, 448(c), 451(g), 456(a)(3), (f), 460, 490(c)) and submitted via the form; upon request, make available to BSEE. (The burden includes approximately 1 hour per response for filling out these forms.)	100	408 forms	40,800
		\$2,113 fee x 408 = \$862,104		
410(b); 417(b)	Reference to Exploration Plan, Development and Production Plan, Development Operations Coordination Document (30 CFR 250, subpart B).	Burden covered under 1010-0151.		0
416(g)(2)	Provide 24 hour advance notice of location of shearing ram tests or inspections; allow BSEE access to witness testing, inspections, and information verification.	0.25	156 notifications	39
416(g)(2)	Submit evidence that demonstrates that the Registered Professional Engineer/firm has the expertise and experience necessary to perform the verification(s); allow BSEE access to witness testing; verify info submitted to BSEE.	0.25	733 submittals	184
417(a), (b)	Collect and report additional information on case-by-case basis if sufficient information is not available.	5	46 reports	230

Citation 30 CFR 250, Subpart D, and NITL(s)	Reporting and Recordkeeping Requirement*	Hour Burden	Average No. of Annual Responses	Annual Burden Hours (rounded)
417(c)	Submit 3 rd party review of drilling unit according to 30 CFR 250, subpart I.		Burden covered under 1014-0011.	0
418(e)	Submit welding and burning plan according to 30 CFR 250, subpart A.		Burden covered under 1014-0022.	0
Subtotal			1,343 Responses	41,253 Hours
			\$862,104 Non-Hour Cost Burdens	
Casing and Cementing Requirements				
420(b)(3)	Submit dual mechanical barrier documentation after installation.	0.75	533 submittals	400
420(b)(3)	Request approval for alternative options to installing barriers.	0.25	58 requests	15
423(a)	Request and receive approval from District Manager for repair.	0.5	86 requests	43
423(b)(4), (c)(2)	Perform pressure casing test; document results and make available to BSEE upon request.	0.75	1,606 tests	1,205
423(c)(5)	Immediately contact District Manager when problem corrected due to failed negative pressure test; submit a description of corrected action taken; and receive approval from District Manager to retest.	1	14 notifications	14
423(c)(8)	Submit documentation of successful negative pressure test in the EOR (Form BSEE-0125).	2	45 submittals	90
424	Caliper, pressure test, or evaluate casing; submit evaluation results; request approval before resuming operations or beginning repairs (every 30 days during prolonged drilling).	1	68 requests	68
426	Record results of all casing and liner pressure tests.	2	4,259 record results	8,518
427(a)	Record results of all pressure integrity tests and hole behavior observations re-formation integrity and pore pressure.	2	4,226 record results	8,452
Subtotal			10,895 Responses	18,805 Hours
Diverter System Requirements				
434; 467	Perform diverter tests when installed and once every 7 days; actuate system at least once every 24-hour period; record results (average 2 per drilling operation); retain all charts/reports relating to diverter tests/actuators at facility for duration of drilling well.	2	620 Responses	1,240
Subtotal			620 Responses	1,240 Hours
Blowout Preventer (BOP) System Requirements				
442(c)	Request alternative method for the accumulator system.		Burden covered under 1014-0022.	0

Citation 30 CFR 250, Subpart D, and NTL(s)	Reporting and Recordkeeping Requirement*	Hour Burden	Average No. of Annual Responses	Annual Burden Hours (rounded)
		Non-Hour Cost Burdens		
442(f)(3)	Demonstrate that your secondary control system will function properly.	4	6 validations	24
442(h)	Label all functions on all panels;	1.5	45 panels	68
442(i)	Develop written procedures for management system for operating the BOP stack and LMRP.	8	39 procedures	312
442(j)	Establish minimum requirements for authorized personnel to operate critical BOP equipment; require training.	Burden covered under 1014-0008.		0
446(a)	Document BOP maintenance and inspection procedures used; record results of BOP inspections and maintenance actions; maintain records for 2 years; make available to BSEE upon request.	3	86 records	258
449(h), (j)(2)	Document all ROV intervention function test results; make available to BSEE upon request.	1	150 tests	150
449(j)(2)	Notify District Manager at least 72 hours prior to stump/initial test on seafloor.	0.25	150 notifications	38
449(k)(2)	Document all autoshear and deadman on your subsea BOP systems function test results; make available to BSEE upon request.	1	150 tests	150
450; 467	Document and record BOP pressure tests results, actuations and inspections; at a minimum every 14 days; as stated for components; sign as correct. Retain all records, including charts, report and referenced documents for the duration of drilling the well.	11	236 test results	2,596
451(c)	Record reason for postponing BOP test (on occasion—approx. 2/year) in driller's report	0.25	86 records	22
Subtotal			948 Responses	3,618 Hours
Drilling Fluid Requirements				
456(b), (i)	Document/record in the driller's report every time you circulate drilling fluid; results of drilling fluid tests.	1	4,259 records	4,259
456(c), (f)	Perform various calculations; post calculated drill pipe, collar, and drilling fluid volume; as well as maximum pressures.	1	4,259 postings	4,259
456(j)	Submit detailed step-by-step procedures describing displacement of fluids with your APD/APM (this submittal obtains District Manager approval).	2	183 wells	366
458(b)	Record daily drilling fluid and materials inventory in drilling fluid report.	0.5	30,295 records	15,148

Citation 30 CFR 250, Subpart D, and NTL(s)	Reporting and Recordkeeping Requirement*	Hour Burden	Average No. of Annual Responses	Annual Burden Hours (rounded)
		Non-Hour Cost Burdens		
459(a)(3)	Request exception to procedure for protecting negative pressure area.	Burden included under 1014-0022.		0
Subtotal			38,996 Responses	24,032 Hours
Other Drilling Requirements				
449(j); 460; 465; plus various ref in A, D, E, F, H, P, and Q	Provide revised plans and the additional supporting information required by the cited regulations [test results, calculations, verifications, procedures, criteria, qualifications, etc.] when you submit an Application for Permit to Modify (APM) (Form BSEE-0124) to BSEE for approval. (The burden includes approximately 1 hour per response for filling out this form.)	17	Form 0124 2,893	49,181
		\$125 fee x 2,893 = \$361,625		
449(j); 460; 465; plus various ref in A, D, E, F, H, P, and Q	Provide revised plans and the additional supporting information required by the cited regulations [test results, calculations, verifications, procedures, criteria, qualifications, etc.] when you submit a Revised Application for Permit to Modify (APM) (Form BSEE-0124) to BSEE for approval. (The burden includes approximately 1 hour per response for filling out this form and there is no fee associated with this.)	1	Form 0124 (revised) 1,551	1,551
420(b)(3)4 23(b)(7)46 5(a); plus various ref in A, E, F, and P	Submit form BSEE-0125 and additional supporting information as required by the cited regulations.	2	Form 0125 279	558
460	Submit plans and obtain approval to conduct well test; notify BSEE before test.	7	14 requests	98
461(a-b); 466(e); 468(a); NTL	Record and submit well logs and surveys run in the wellbore and/or charts of well logging operations (including but not limited to).	3	302 logs/surveys	906
	Record and submit directional and vertical-well surveys.	1	302 reports	302
	Record and submit velocity profiles and surveys.	1	45 reports	45
	Record and submit core analyses.	1	130 analyses	130
461(e)	Provide copy of well directional survey to affected leaseholder.	0.75	11 occasions	9
462(a)	Prepare and post well control drill plan for crew members.	0.5	314 plans	157
462(c)	Record results of well-control drills.	1	8,632 results	8,632
463(b)	Request field drilling rules be established, amended, or canceled.	4	6 requests	24

Citation 30 CFR 250, Subpart D, and NTL(s)	Reporting and Recordkeeping Requirement*	Hour Burden	Average No. of Annual Responses	Annual Burden Hours (rounded)
465(a)(1) 428, 449(j) & k(1), 456(j)	Obtain approval to revise your drilling plan or change major drilling equipment by submitting a revised BSEE-0123, Application for Permit to Drill and BSEE-0123S, Supplemental APD Information Sheet [no fee for Revised APDs]. (The burden includes approximately 1 hour per response for filling out these forms).	21	662 submittals	13,902
Subtotal			15,141 Responses	75,495 Hours
			\$361,625 Non-Hour Cost Burdens	
Applying for a Permit to Modify and Well Records				
466, 467	Retain drilling records for 90 days after drilling is complete; retain casing/liner pressure, diverter, and BOP records for 2 years; retain well completion/well workover until well is permanently plugged/abandoned or lease is assigned.	2.15	3,526 records	7,581
468(b); 465(b)(3)	In the GOM OCS Region, submit drilling activity reports weekly on Forms 0133 (Well Activity Report) and 0133S (Bore Hole Data) and supporting information. (The burden includes approximately 1 hour per response for filling out these forms.)	1	Form 0133 4,160	4,160
		1	Form 0133S 4,160	4,160
468(c)	In the Pacific and Alaska OCS Regions during drilling operations, submit daily drilling reports. N/A in GOM.	1	33 wells x 365 days x 20% year = 2,409	2,409
469; NTL	As specified by region, submit well records, paleontological interpretations or reports, service company reports, and other reports or records of operations.	1.5	341 submissions	512
Subtotal			14,596 Responses	18,822 Hours
Hydrogen Sulfide				
490(c), (d)	Submit request for reclassification of H ₂ S zone; notify BSEE if conditions change.	0.5	3 responses	2
490(f); also referenced in 418(d)	Submit contingency plans for operations in H ₂ S areas (16 drilling, 5 work-over, 6 production).	30	28 plans	840
490(g)	Post safety instructions; document training; retain records at facility where employee works; train on occasion and/or annual refresher (approx. 2/year).	4	34 responses	136
490(h)(2)	Document and retain attendance for weekly H ₂ S drills and monthly safety mtgs until operations completed or for 1 year for production facilities at nearest field office.	2	2,514 responses	5,028

Citation 30 CFR 250, Subpart D, and NTL(s)	Reporting and Recordkeeping Requirement*	Hour Burden	Average No. of Annual Responses	Annual Burden Hours (rounded)
		Non-Hour Cost Burdens		
490(i)	Display warning signs—no burden as facilities would display warning signs and use other visual and audible systems.			0
490(j)(7-8)	Record H ₂ S detection and monitoring sensors during drilling testing and calibrations; make available upon request.	4	4,328 records	17,312
490(j)(12)	Propose alternatives to minimize or eliminate SO ₂ hazards—submitted with contingency plans—burden covered under § 250.490(f).			0
490(j)(13) (vi)	Label breathing air bottles—no burden as supplier normally labels bottles; facilities would routinely label if not.			0
490(l)	Notify (phone) BSEE of unplanned H ₂ S releases (approx. 2/year).	Oral 0.2	24 calls	5
		Written 5	24 written reports	120
490(o)(5)	Request approval to use drill pipe for well testing.	2	4 requests	8
490(q)(1)	Seal and mark for the presence of H ₂ S cores to be transported—no burden as facilities would routinely mark transported cores.			0
490(q)(9)	Request approval to use gas containing H ₂ S for instrument gas.	2	2 requests	4
490(q)(12)	Analyze produced water disposed of for H ₂ S content and submit results to BSEE.	3	164 submittals	492
Subtotal			7,125 Responses	23,943 Hours
Miscellaneous				
400-490	General departure or alternative compliance requests not specifically covered elsewhere in subpart D.	2	30 requests	60
NTL	Voluntary submit to USCG read only access to the EPIRB data for their moored drilling rig fleet before hurricane season.	.25	80 submittals	20
Subtotal			110 Responses	80 Hours
TOTAL BURDEN			94,910 Responses	208,630 Hours
			\$1,223,729 Non-Hour Cost Burdens	

* The forms mentioned in this collection, for the most part, are currently submitted electronically using eWell. In the future, BSEE will be allowing the option of electronic reporting for certain requirements not necessarily associated with a form.

BILLING CODE 4310-VH-C

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: The currently approved non-hour cost burden for this collection is \$2,225,286. In this ICR, we have identified two non-hour cost burdens. Applications for Permit to Drill (APDs) require a fee (\$2,113), and Applications for Permit to Modify (APMs) require a fee (\$125). We have not identified any other non-hour cost burdens associated with this collection of information, and we

estimate a total reporting non-hour cost burden of \$1,223,729.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency “. . . to provide

notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .”. Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden

on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other than hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may

be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 8, 2014.

Robert W. Middleton,
Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2014-08332 Filed 4-11-14; 8:45 am]

BILLING CODE 4310-VH-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**[FWS-HQ-IA-2014-N061;
FXIA16710900000-145-FF09A30000]**

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species,

marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Shauntá Nichols, 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: Shauntá Nichols, (703) 358-2104 (telephone); (703) 358-2280 (fax); DMAFR@fws.gov (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application Federal Register notice	Permit issuance date
06190B	University of Tennessee, College of Veterinary Medicine.	78 FR 44961; July 25, 2013	November 18, 2013.
16871B	Michael Stec	78 FR 62647; October 22, 2013	December 18, 2013.
15467B	Wildlife Conservation Society	78 FR 65352; October 31, 2013	January 14, 2014.
19040B	Joseph Nabers	78 FR 65352; October 31, 2013	February 18, 2014.
21469B	University of Illinois, Veterinary Diagnostic Laboratory.	78 FR 76171; December 16, 2013	January 16, 2014.
22136B	Wallace Phillips	78 FR 76171; December 16, 2013	January, 24, 2014.
22134B	Lynn Stinson	78 FR 76171; December 16, 2013	February 11, 2014.
23351B	William Jensen	79 FR 835; January 7, 2014	February 18, 2014.
25261B	James DeWoody	79 FR 4171; January 24, 2014	March 5, 2014.
26184B	Ramon Gonzalez	79 FR 8203; February 11, 2014	March 18, 2014.
23339B	University of California at Berkeley	79 FR 8203; February 11, 2014	March 24, 2014.
184718	Delaware Museum of Natural History	79 FR 8203; February 11, 2014	March 25, 2014.
20341B	Gregory Pipkin	79 FR 10547; February 25, 2014	April 2, 2014.
11219B	Seward Association for the Advancement of Marine Science, Alaska SeaLife Center.	78 FR 67389; November 12, 2013	April 2, 2014.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax

Drive, Room 212, Arlington, VA 22203; fax (703) 358-2280.

Shauntá Nichols,
Legal Instrument Examiner, Branch of Permits, Division of Management Authority.

[FR Doc. 2014-08297 Filed 4-11-14; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Application for Withdrawal and Opportunity for Public Meeting; San Bernardino, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service (USFS) filed an application with the Bureau of Land Management (BLM),

requesting the Secretary of the Interior to withdraw, for 20 years, subject to valid existing rights, approximately 4,203 acres of Federal lands in the San Bernardino National Forest (SBNF), California, from location and entry under the United States mining laws in order to maintain and conserve habitat for four listed threatened and endangered species (Cushenbury buckwheat, Cushenbury Milk-vetch, Cushenbury oxytheca, and Parish's daisy). The application also requests that approximately 440 acres of non-Federal lands within the boundaries of the lands proposed for withdrawal be included in the withdrawal if they are acquired by the United States. This notice temporarily segregates the lands for up to 2 years from location and entry under the United States mining laws, but not from the mineral material sales or mineral or geothermal leasing, to protect the biological resources while the withdrawal application is being processed. This notice also provides the public an opportunity to comment on the proposed withdrawal application and to request a public meeting.

DATES: Comments, including requests for a public meeting, must be received by July 14, 2014.

ADDRESSES: Comments should be sent to the California State Director, Bureau of Land Management, 2800 Cottage Way, Suite W-1623, Sacramento, CA 95825-1886.

FOR FURTHER INFORMATION CONTACT: Elizabeth Easley, BLM California State Office, 916-978-4673 or Scott Eliason, San Bernardino National Forest, 909-382-2830. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The USFS filed an application requesting that the Secretary of the Interior withdraw, for 20 years, subject to valid existing rights, the following described lands located in San Bernardino County, California, from location and entry under the United States mining laws, but not from leasing under the mineral or geothermal leasing, or disposal under the Materials Act of 1947.

The intent of this description is to include the following lands as defined under the April 29, 2003, Carbonate Habitat Management Strategy, within the San Bernardino National Forest Boundary: (1) All Priority Areas within

the Furnace Unit; (2) All occupied and designated critical habitat within the Initial Habitat Reserve; and (3) Additional lands being offered for species and habitat conservation as part of two current proposed mine plans.

(a) National Forest System lands

San Bernardino Meridian

T. 3 N., R. 1 W.,
 sec. 10, SE¹/₄;
 sec. 14, W¹/₂NW¹/₄ and W¹/₂SW¹/₄;
 sec. 15, NE¹/₄;
 sec. 22, SE¹/₄;
 sec. 23, W¹/₂NW¹/₄, W¹/₂NE¹/₄SW¹/₄,
 S¹/₂SE¹/₄NE¹/₄SW¹/₄, NW¹/₄SW¹/₄,
 S¹/₂SW¹/₄, S¹/₂SW¹/₄NE¹/₄SE¹/₄,
 S¹/₂SE¹/₄NE¹/₄SE¹/₄,
 S¹/₂SW¹/₄NW¹/₄SE¹/₄,
 S¹/₂SE¹/₄NW¹/₄SE¹/₄, and S¹/₂SE¹/₄;
 sec. 24, S¹/₂NE¹/₄SW¹/₄SW¹/₄,
 S¹/₂NW¹/₄SW¹/₄SW¹/₄, and
 S¹/₂SW¹/₄SW¹/₄;
 sec. 26, NW¹/₄NW¹/₄;
 sec. 27, lot 1, NE¹/₄, N¹/₂NW¹/₄, and
 SW¹/₄NW¹/₄.

T. 3 N., R. 1 E.,
 sec. 13, E¹/₂ and NW¹/₄;
 sec. 14, W¹/₂NE¹/₄SW¹/₄,
 W¹/₂SE¹/₄NE¹/₄SW¹/₄,
 E¹/₂NW¹/₄SW¹/₄, NW¹/₄NW¹/₄SW¹/₄,
 E¹/₂SW¹/₄NW¹/₄SW¹/₄,
 NW¹/₄SW¹/₄NW¹/₄SW¹/₄,
 NE¹/₄SW¹/₄SW¹/₄,
 NE¹/₄NW¹/₄SW¹/₄SW¹/₄,
 E¹/₂SE¹/₄SW¹/₄SW¹/₄, and
 SE¹/₄SW¹/₄;
 sec. 19, lot 4, E¹/₂SW¹/₄, and W¹/₂SE¹/₄;
 sec. 23, NE¹/₄NE¹/₄NE¹/₄;
 sec. 24, NE¹/₄ and N¹/₂NW¹/₄;
 sec. 30.

T. 3 N., R. 2 E.,
 PB 39, unsurveyed;
 PB 46, unsurveyed.

The areas described aggregate 3,039.48 surveyed acres and 1,164 unsurveyed acres, totaling approximately 4,203 acres, more or less, in San Bernardino County, California. (b) The following described non-Federal lands are located within the boundaries of the proposed withdrawal areas. In the event that these non-Federal lands return to public ownership, the application requests that they be subject to the terms and conditions described above.

Non-Federal lands

San Bernardino Meridian

T. 3 N., R. 1 E.,
 sec. 13, SW¹/₄;
 sec. 14, NE¹/₄, NE¹/₄SE¹/₄, and
 S¹/₂SE¹/₄.

The areas described aggregate 440 acres, more or less, in San Bernardino County, California.

The purpose of the withdrawal is to protect the biological resources within the SBNF, which include four listed threatened and endangered plant species and their designated critical habitat. The withdrawal will implement provisions of the Carbonate Habitat Management Strategy under the SBNF Land Management Plan. It will allow the species and habitat conservation measures needed to offset species and habitat losses specifically associated with two currently proposed mine development projects on the SBNF. These two projects are the Omya Inc. Butterfield Quarry Expansion and the Mitsubishi Cement Company South Quarry project.

No alternative sites were considered, as these lands correspond with the distribution of the listed species habitats, and meet provisions of the Carbonate Habitat Management Strategy.

The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection from mineral activities.

The USFS does not need to acquire water rights to fulfill the purpose of the requested withdrawal.

The above-described lands are National Forest System lands, and as such, the Secretary will approve a withdrawal only with the consent of the head of the department or agency administering these lands.

The temporary land uses, which may be permitted during this segregative period, include leases, licenses, permits, rights-of-way, and other non-mineral uses consistent with the SBNF Management Plan, other than under the mining laws.

Records relating to the application may be examined by contacting the BLM Public Room at the above address or phone.

On or before July 14, 2014, all persons who wish to submit comments, suggestions, objections or request a public meeting in connection with the proposed withdrawal may present their views in writing to the BLM State Director at the address indicated above.

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. Individuals who submit written comments may request confidentiality by asking us in your comment to withhold your personal identifying information from public review; however, we cannot guarantee that we will be able to do so.

Notice is hereby given that the opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director, California State Office, BLM at the address indicated above by July 14, 2014. If the BLM authorized officer determines that the BLM will hold a public meeting, the BLM will publish a notice of the time and place in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period until April 14, 2016, the lands described in this notice will be segregated from location and entry under the United States mining laws unless the application is denied or cancelled or the withdrawal is approved prior to that date.

Cynthia Staszak,

Associate Deputy State Director, Natural Resources.

[FR Doc. 2014-08310 Filed 4-11-14; 8:45 am]

BILLING CODE 3411-15-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-900]

Certain Navigation Products, Including GPS Devices, Navigation and Display Systems, Radar Systems, Navigational Aids, Mapping Systems and Related Software; Commission Determination Not To Review an Initial Determination Granting Complainants' Motion To Partially Terminate the Investigation as To Certain Claims and for Leave To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 12) of the presiding administrative law judge ("ALJ") granting an unopposed motion (1) to partially terminate the investigation as to claims 1-3, 11, 12, 14, 16, 17, and 19 of United States Patent No. 6,084,565 ("the '565 patent") and (2) for leave to amend the complaint and notice of investigation to remove references to the

cancelled claims and certain accused products.

FOR FURTHER INFORMATION CONTACT:

Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337-TA-900 on November 15, 2013, based on a complaint filed by Furuno Electric Co., Ltd. of Hyogo, Japan and Furuno U.S.A., Inc. of Camas, Washington ("Furuno"). 78 FR 68861-62 (Nov. 15, 2013). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain navigation products, including GPS devices, navigation and display systems, radar systems, navigational aids, mapping systems and related software by reason of infringement of the '565 patent and United States Patent Nos. 6,424,292; 7,161,561; and 7,768,447. The complaint named several respondents.

On January 31, 2014, Furuno moved, unopposed, (1) to terminate the investigation as to claims 1-3, 11, 12, 14, 16, 17, and 19 of the '565 patent; and (2) for leave to amend the complaint to remove references to the canceled claims and the accused automotive and avionic products. On February 12, 2014, the Commission investigative attorney filed a response in support of the motion.

On March 10, 2014, the ALJ issued the subject ID, granting the unopposed motion. The ALJ indicated compliance with the requirements of Commission Rule 210.21(a) (19 CFR 210.21(a)) and that no extraordinary circumstances prohibited granting the motion. Regarding amending the complaint and

notice of investigation, the ALJ, pursuant to Commission Rule 210.14(b) (19 CFR 210.14(b)), indicated good cause existed to amend the complaint and notice of investigation, finding "it will streamline the investigation and there is no evidence that public interest and rights of the parties will be prejudiced. . . ." None of the parties petitioned for review of the ID.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: April 9, 2014.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014-08321 Filed 4-11-14; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-914]

Certain Sulfentrazone, Sulfentrazone Compositions, and Processes for Making Sulfentrazone; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 5, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of FMC Corporation of Philadelphia, Pennsylvania. A letter clarifying the complaint was filed on March 26, 2014. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain sulfentrazone, sulfentrazone compositions, and processes for making sulfentrazone by reason of infringement of certain claims of U.S. Patent No. 7,169,952 ("the '952 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders. A motion for temporary

relief filed concurrently with the complaint, requests that the Commission issue a temporary limited exclusion order and temporary cease and desist order prohibiting the importation into and the sale within the United States after importation of certain sulfentrazone, sulfentrazone compositions, and processes for making sulfentrazone that infringe claims 25–28 of the '952 patent during the course of the Commission's investigation.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2013).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 8, 2014, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(ii) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain sulfentrazone, sulfentrazone compositions, and processes for making sulfentrazone by reason of infringement of one or more of claims 25–28 of the '952 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.58 of the Commission's Rules of Practice and

Procedure, 19 CFR 210.58, the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, is provisionally accepted and referred to the presiding administrative law judge for investigation;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: FMC Corporation, 1735 Market Street, Philadelphia, PA 19103.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Beijing Nutrichem Science and Technology Stock Co., Ltd., Building D–1, NO66 Xixiaokou Road, Haidian District, Beijing, China 100192.
Summit Agro USA, LLC, 8000 Regency Park, Suite 265, Cary, NC 27518.
Summit Agro North America, Holding Corporation, 300 Madison Avenue, 4th Floor, New York, NY 10017.
Jiangxi Heyi Chemicals Co. Ltd., No. 43 Ji Shan Industry Park, Longcheng Town, Penze County, Jiujiang City, Jianxi Province, China 332700.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint, the motion for temporary relief, and the notice of investigation must be submitted by the named respondents in accordance with sections 210.13 and 210.59 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13 and 210.59. Pursuant to 19 CFR 201.16 (e), 210.13(a), and 210.59, such responses will be considered by the Commission if received not later than 10 days after the date of service by the Commission of the complaint, the motion for temporary relief, and the notice of investigation. Extensions of time for submitting responses to the complaint, motion for temporary relief, and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief, and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary

relief, and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, the motion for temporary relief, and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: April 9, 2014.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–08326 Filed 4–11–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–872]

Certain Compact Fluorescent Reflector Lamps, Products Containing Same and Components Thereof; Commission Determination To Review in Part A Final Initial Determination Finding a Violation of Section 337; Schedule for Briefing on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”), finding a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired

persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 5, 2013, based on a complaint filed by Neptun Light, Inc., and Mr. Andrzej Bobel (together, "Neptun") to consider alleged violations of section 337 by reason of infringement of claims 1, 2, 10, and 11 of U.S. Patent No. 7,053,540 ("the '540 patent"). 78 FR 14357-58. The Commission's notice of investigation named as respondents Maxlite, Inc. ("Maxlight"); Satco Products, Inc. ("Satco"); Litetronics International, Inc. ("Litetronics") (together, "Respondents"); and Technical Consumer Products, Inc. ("TCP"). *Id.* at 14358. The Office of Unfair Import Investigations did not participate in this investigation. *Id.*

On June 10, 2013, Neptun and TCP moved to terminate the investigation with respect to TCP on the basis of a settlement agreement. The motion was granted on June 11, 2013. Order No. 20, *not reviewed* (July 8, 2013).

On February 3, 2014, the ALJ issued his final initial determination ("ID"), finding a violation of section 337. Specifically, the ALJ found that Maxlite and Satco violated section 337 with respect to claims 1, 2 and 11 of the '540 patent, and that Litetronics violated section 337 with respect to claims 1, 2 and 10 of the '540 patent. The ALJ recommended that a limited exclusion order issue against the infringing products of Maxlite, Satco, and Litetronics. He did not recommend the issuance of any cease and desist orders.

On February 18, 2014, Respondents petitioned for review of several of the ALJ's findings. Also on February 18, 2014, Neptun contingently petitioned for review of the ALJ's finding that Neptun had not made a sufficient showing on the economic prong of the domestic injury requirement through 19 U.S.C. 1337(a)(3)(C). On February 26, 2014, Neptun and Respondents opposed each other's petitions.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the ALJ's findings on the economic prong of the domestic industry requirement, the ALJ's construction of "mating opening," and the ALJ's findings on infringement. The Commission has determined not to review the remaining findings in the ID.

The parties are requested to brief their positions on the issues under review

with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in briefing on the following issues:

1. Whether Neptun's asserted investments and expenditures were made "with respect to the articles protected by the ['540] patent" within the meaning of 19 U.S.C. 1337(a)(3). In doing so, please address the following: "Commission precedent requires that expenses be allocated to each of the products covered by the asserted patents." *Certain Computer Forensic Devices and Products Containing Same*, Inv. No. 337-TA-799, USITC Pub 4408, Initial Determination at 10 (July 2013) (unreviewed in relevant part). Please provide a reasonable estimate, based on the evidence of record, of the portion of Neptun's investments that are associated with articles protected by the '540 patent. Explain whether, and to what extent, Neptun's books and records enable an accounting of expenditures specific to the articles protected by the '540 patent.

2. Please explain why (or why not) the relevant portion of Neptun's asserted investments and expenditures related to the articles protected by the '540 patent are "significant" within the meaning of 19 U.S.C. 1337(a)(3)(A) and (B) in the context of the company, the industry, or the realities of the marketplace. In doing so, please identify the appropriate methodology for assessing significance here, and explain how the methodology and the record evidence shows (or does not show) that the investments with respect to the articles protected by the '540 patent are significant.

3. Whether Neptun made "substantial investment" in "engineering" or "research and development" with respect to the exploitation of the '540 patent within the meaning of 19 U.S.C. 1337(a)(3)(C). Which of Neptun's asserted expenses constitute investments that fall under 19 U.S.C. 1337(a)(3)(C), such as investments in engineering, research and development, or licensing? Please identify and provide a reasonable estimate, based on the evidence of record, of the portion of these expenses that are associated with the exploitation of the '540 patent. Please explain, qualitatively, how these expenses and the underlying activities that these expenses reflect—relate to exploitation of the '540 patent. Please identify any such investments and explain why (or why not) such investments are substantial in the context of the company, the industry, or the realities of the marketplace.

4. Whether "a hole or aperture through which the light source base is

mated with the ballast housing" is an appropriate construction for the term "mating opening" in the '540 patent. Additionally, using this construction, explain how Respondents' accused products satisfy (or do not satisfy) the "mating opening" limitation, either literally or under the doctrine of equivalents.

5. Please explain how Respondents' accused products satisfy (or do not satisfy) the limitations "said cavity having a first circumferential flange" and "the first circumferential flange of the reflector cavity." Specifically, identify the evidence showing that the asserted cavity and the first circumferential flange of the accused products have a sufficient relationship such that there is a cavity "having a first circumferential flange" and that the first circumferential flange is "of the reflector cavity."

6. Please explain how Respondents' accused products satisfy (or do not satisfy) the limitations "said base being inside said defined cavity of said reflector and located inside said mating opening." Specifically, identify the evidence showing whether or not the light source base is located inside the reflector's defined cavity and located inside the mating opening either literally or under the doctrine of equivalents.

7. Please explain how Respondents' accused products satisfy (or do not satisfy) the limitations "said base having a second circumferential flange" and "the second circumferential flange of the light source base." Specifically, please identify the evidence showing whether or not the asserted base and second circumferential flange have a sufficient relationship such that there is a base "having a second circumferential flange" and that the second circumferential flange is "of the light source base."

The parties have been invited to brief only the discrete issues described above, with reference to the applicable law and evidentiary record. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of

remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. The complainants are also requested to submit proposed remedial orders for the Commission's consideration. The complainants are also requested to state the date that the '540 patent expires and the HTSUS numbers under which the accused products are imported. The entirety of the parties' written

submissions must not exceed 50 pages, and must be filed no later than close of business on April 22, 2014. Reply submissions must not exceed 25 pages, and must be filed no later than the close of business on April 29, 2014. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-872") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: April 8, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014-08298 Filed 4-11-14; 8:45 am]

BILLING CODE 7020-02-P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: May 29-30, 2014.

Time: 8:30 a.m. to 5:00 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Meacham Conference Center, One Columbus Circle NE., Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Jonathan C. Rose, Rules Committee Secretary, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502-1820.

Dated: April 9, 2014.

Jonathan C. Rose,

Rules Committee Secretary.

[FR Doc. 2014-08350 Filed 4-11-14; 8:45 am]

BILLING CODE 2210-55-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Settlement Agreement Under the Federal Debt Collection Procedures Act, Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, and Other Statutes

On April 3, 2014, the Department of Justice lodged a proposed settlement agreement (the "Settlement Agreement") with the United States Bankruptcy Court for the Southern District of New York in the matter entitled *Tronox Inc., et al., and United States v. Anadarko Petroleum Corp., et al.*, Bankruptcy Adversary Proceeding No. 09-1198. This matter is part of the bankruptcy case of Tronox Inc. and its affiliates (collectively "Tronox"), *In re Tronox Inc., et al.*, No. 09-10156, in the same court.

The parties to the proposed Settlement Agreement are Anadarko Petroleum Corp., Kerr McGee Corporation, and six related entities (the "Defendants"), the United States, and the Anadarko Litigation Trust. The Settlement Agreement provides for \$5.15 billion dollars plus interest to be

paid to the Anadarko Litigation Trust. These proceeds will then be distributed to the United States, certain environmental response trusts, a tort claims trust, and certain state and tribal governments as provided by the Plan of Reorganization, Litigation Trust Agreement, Environmental Settlement Agreement, and other documents (collectively, the "Bankruptcy Documents") previously approved by the bankruptcy court in Tronox's bankruptcy.

The Settlement Agreement resolves fraudulent conveyance claims brought by the United States and the Anadarko Litigation Trust against Defendants. As part of the Settlement Agreements, Defendants will receive covenants not to sue from the United States under various statutes, including the Federal Debt Collection Procedures Act, the Comprehensive Environmental Response Compensation, and Liability Act and Resource Conservation and Recovery Act, and for common law claims derivative of Tronox's claims against Defendants, all as and to the extent specified in the Settlement Agreement.

Pursuant to this Settlement Agreement and the Bankruptcy Documents, portions of the Defendants' payment under the Settlement Agreement will fund clean-up or pay for past or future environmental costs or natural resource damages at numerous sites around the county. Among the sites at issue are the following:

The Mobile Pigment Complex, Mobile, AL
 The former Petroleum Terminal Site, Birmingham, AL
 The Jacksonville AgChem Site, Jacksonville, FL
 The former titanium dioxide plant in Savannah, GA
 The Soda Springs Vanadium Plant, Soda Springs, ID
 The Kress Creek and Residential Areas Sites, W. Chicago, IL
 The Rare Earths Facility, W. Chicago, IL
 The Lindsay Light Thorium Sites, Chicago, IL
 The former wood treating facility, Madison, IL
 The former wood treating facility, Indianapolis, IN
 The former wood treating facility, Bossier City, LA
 The Calhoun Gas Plant Site, Calhoun, LA
 The Fireworks Site, Hanover, MA
 The former wood treating facility, Kansas City, MO
 The former wood treating facility, Springfield, MO
 The former wood treating facility, Columbus, MS

The former wood treating facility, Hattiesburg, MS
 The Navassa wood treating Site, Wilmington, NC
 The former Federal Creosote facility, Manville, NJ
 The Welsbach Gas and Mantle Site, Camden, NJ
 The Henderson Facility, Henderson, NV
 The former wood treating facility, Rome, NY
 The Toledo Tie Site, Toledo, OH
 The former nuclear fuels facility, Cimarron, OK
 The Cleveland Refinery Site, Cleveland, OK
 The Cushing Refinery Sites, Cushing, OK
 The White King/Lucky Lass mine site, Lakeview, OR
 The former wood treating facility, Avoca, PA
 The Corpus Christi Petrol Terminal Site, CC, TX
 The former wood treating facility, Texarkana, TX
 The Riley Pass Mine Site, Harding County, SD
 More than 50 former uranium mines and mills, including Shiprock, Churchrock, and Ambrosia Lake on and in the vicinity of Navajo Nation, NM, AZ
 The former Moss American Site, Milwaukee, WI
 More than 1800 current and former service stations in twenty-four states.

The publication of this notice opens a period for public comment on the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *Tronox and United States v. Anadarko Petroleum Corp.*, D.J. Ref. No. 90-11-3-09688. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail	Assistant Attorney General; U.S. DOJ—ENRD; P.O. Box 7611; Washington, DC 20044-7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the Settlement Agreement may be examined and downloaded at a Justice Department Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. We will provide a paper

copy of the Settlement Agreement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$32.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without exhibits or notice of lodging, the cost is \$14.75.

Robert E. Maher Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014-08324 Filed 4-11-14; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Vincent G. Colosimo, D.M.D.; Decision and Order

On February 27, 2013, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Vincent G. Colosimo, D.M.D. (hereinafter, Applicant). GX 1. The Show Cause Order proposed the denial of Applicant's application for a DEA Certificate of Registration as a practitioner, on the ground that his "registration would be inconsistent with the public interest." *Id.* at 1 (citing 21 U.S.C. 823(f)).

More specifically, the Show Cause Order alleged that on November 5, 2009, Applicant had surrendered his previous DEA registration, and that on June 20, 2012, Applicant had applied for a new registration at the proposed registered location of Dental Village, 7117 East Broadway Blvd., Tucson, Arizona.¹ *Id.* The Show Cause Order then alleged that on September 8, 2000, DEA Investigators (DIs) had conducted an inspection of Applicant's then-registered location, during which the DIs found approximately 108 dosage units of 7.5/500mg Lortab and 400 dosage units of diazepam 10mg, and that Applicant "told investigators that [he] transported the controlled substances to [his] place of practice in order to dispense [them] to [his] patients before and after procedures," as well as that he had "consumed several dosage units of [the] diazepam . . . upon the

¹ Applicant initially applied for registration at a different address. However, several weeks before the Show Cause Order was issued, he changed the address of his proposed registered location to Dental Village. GX 15.

recommendation of his physician.” *Id.* at 1–2.

Next, the Show Cause Order alleged that on January 28, 2010, the United States Attorney for the Western District of Pennsylvania charged Applicant with “knowingly, intentionally, and unlawfully conspiring to distribute and possess with intent to distribute 500 grams or more of a mixture and substance containing a detectable amount of cocaine, a Schedule II” controlled substance. *Id.* at 2 (citing 21 U.S.C. 846). The Order then alleged that Applicant pled guilty to the charge, and that on July 6, 2010, the U.S. District Court for the Western District of Pennsylvania convicted him of the charge. *Id.*

Finally, the Show Cause Order alleged that various state dental boards had taken action against his dental licenses based on his conviction. *Id.* The Show Cause Order alleged that these included the Pennsylvania State Board of Dentistry, which suspended his license for five years; the Nevada Board of Dental Examiners, with which he had entered a stipulation, pursuant to which he voluntarily surrendered his Nevada license; and the Arizona State Board of Dental Examiners, which on August 12, 2010, suspended his dental license for five years. *Id.* The Order then alleged that on June 11, 2012, Applicant entered into an agreement with the Arizona Board, pursuant to which he “agreed to enroll in a treatment and rehabilitation program and complete 36 hours of continuing education in . . . substance abuse,” and was granted a conditional license. *Id.*

On March 4, 2013, the Show Cause Order was served on Applicant by Certified Mail. GX 2. On April 4, 2013, Applicant’s letter requesting a hearing (which had been mailed) was received by the Office of Administrative Law Judges. GX 4, at 2. Deeming the request to be one day late, the ALJ ordered the Parties to file a statement addressing whether there was good cause to excuse the late filing. GX 3. Both Parties filed such statements; the Government also filed a motion to terminate the proceedings. GX 5. Thereafter, the ALJ granted the Government’s motion, finding that Applicant had not demonstrated good cause and terminated the hearing.

Thereafter, the Government filed a Request for Final Agency Action. On review, the Administrator vacated the ALJ’s order terminating the proceeding and rejected the Government’s request for final agency action. While noting that Applicant had not supported with affidavits the various factual assertions made by him in response to the ALJ’s

order, which directed the parties to address whether there was good cause to excuse the untimely filing, the Administrator held that if those assertions were supported, Applicant had demonstrated good cause. The Administrator further noted that while the Applicant’s hearing “request was not received by the Hearing Clerk until the afternoon of April 4, 2013, the Show Cause Order instructed [him] to mail his hearing request to an address which is a different physical location than the Office of the Administrative Law Judges” and that the record did not “establish whether [the] hearing request was received by the former on the same day that it was received by the hearing clerk.” Administrator’s Order (GX 16), at 5 n.3. The Administrator further explained that “any delay that is attributable to a delay in the delivery of mail within the Agency is not properly chargeable to” Applicant. *Id.* The Administrator thus remanded the case to the Office of Administrative Law Judges for further proceedings consistent with her order. *Id.*

On remand, the ALJ ordered the parties to file their prehearing statements and to serve a copy of their proposed exhibits by certain dates. ALJ Ex. 10. While the Government timely complied with the ALJ’s order, ALJ Ex. 11, Applicant did not. Tr. 9–10; 14–15 (Nov. 19, 2013). The Government then moved to terminate the proceeding, on the ground that Applicant had waived his right to a hearing. ALJ Ex. 12, at 2 (citing cases).

Thereafter, the ALJ held the initial day of the hearing, during which he found that Applicant had not established good cause for failing to file his prehearing statement and barred him from subsequently introducing witness testimony as well as documentary evidence. GX 18, at 2. The following day, the ALJ issued an order setting the date for the evidentiary phase of the hearing. *Id.* However, six days before the hearing was to reconvene, Applicant’s counsel contacted the ALJ’s office and suggested that Applicant would seek to withdraw his application. *Id.* The ALJ then scheduled a Prehearing Conference for the purpose of determining whether there was any need to conduct the evidentiary phase of the hearing. *Id.*

The next day, Respondent filed a motion to withdraw his application stating that he “does not wish to proceed with a hearing where the DEA participates.” GX 17, at 3. At the Prehearing Conference, the Government’s counsel explained that the ALJ did not have authority to rule on Respondent’s motion to withdraw

but could grant a request to waive his right to a hearing. GX 18, at 1; see 21 CFR 1301.16. The ALJ then asked Respondent’s counsel “whether Respondent wished to withdraw his application or whether he wished to waive his right to a hearing.” GX 18, at 2. Respondent’s counsel answered that Respondent wanted to do both, but even if the ALJ lacked authority to grant Respondent’s motion to withdraw his application, he “still wished to waive his right to a hearing.” *Id.* The Government did not object to Respondent’s request to waive his right to a hearing. *Id.*

Later that day, the ALJ issued an order in which he found that Respondent had “expressly waived his opportunity for a hearing.” *Id.*² Regarding the motion to withdraw, the ALJ noted that under 21 CFR 1301.16, an applicant, who has been issued an order to show cause, may withdraw his application “with permission of the Administrator at any time where good cause is shown by the applicant or where the amendment or withdrawal is in the public interest.” The ALJ thus concluded that he was without authority to act on Respondent’s withdrawal request. While the ALJ provided that the parties could file an objection to his order, neither party did so, and on January 16, 2014, the ALJ forwarded the record of the proceeding to my Office.

On February 28, 2014, the Government filed a Request for Final Agency Action seeking the denial of Respondent’s application “on the basis that [his] registration would be inconsistent with the public interest.” Gov. Request for Final Agency Action, at 1. Therein, the Government states that the ALJ “forwarded the case to the Administrator for either approval of Respondent’s request to withdraw his application or for Final Agency Action.” *Id.* at 3. While the Government observes that Respondent has waived his right to a hearing, it does not address whether there is either “good cause” to grant Respondent’s withdrawal request (which remains pending before me) or whether granting his request “is in the public interest.” See *id.* at 1–9. I conclude, however, that granting Respondent’s withdrawal request is in the public interest.

² The order was entitled: “Order Vacating Part of Order Dated November 20, 2013 And Remanding Case To The Administrator For Final Disposition.” ALJs do not, however, remand cases to the Administrator or Deputy Administrator. They either terminate a proceeding; or conduct a proceeding, prepare a recommended decision, and forward the record to the Administrator’s Office for review.

Discussion

No decision of the Agency has squarely confronted the question of whether the granting of a request to withdraw an application, which is submitted by a person after he has been issued a show cause order, is in the public interest. However, in *Liddy's Pharmacy, L.L.C.*, 76 FR 48887 (2011), the Administrator, in rejecting a motion by the Government to dismiss a case as moot, provided some guidance (albeit in dictum) as to when the granting of a withdrawal request, which is filed after the issuance of a show cause order, is in the public interest.

In *Liddy's Pharmacy*, the Government issued a show cause order, which sought the revocation of the respondent's registration on the ground that it had committed acts which render its registration inconsistent with the public interest, and proceeded to a hearing before an ALJ, at which it prevailed. 76 FR at 48888. While the matter was pending the Administrator's review, the respondent agreed to voluntarily surrender its registration and the Government moved to terminate the proceeding on the ground that it had become moot. *Id.* The respondent, however, had previously filed a timely renewal application. *Id.* at 48888–89.

After noting that the voluntary surrender form “contain[ed] no language manifesting that [r]espondent ha[d] withdrawn its pending application,” the Administrator explained that even if the respondent had requested to withdraw its application, she would have “concluded that allowing [r]espondent to withdraw its application would be contrary to the public interest.” *Id.* at 48888. In reaching this conclusion, the Administrator noted several factors, including the “extensive resources that have been expended in both the litigation and review of this case, the egregious misconduct established by th[e] record,” and that the respondent could immediately reapply for a new registration. *Id.* While the hearing in *Liddy* was not particularly lengthy (in part, because only the Government presented evidence), the record was nonetheless extensive.³

Of note, in *Liddy*, the Government was the party which moved to terminate

the proceeding. Thus, the Administrator did not discuss the potential prejudice to the Government had she allowed the respondent to withdraw its application. However, it is manifest that where the Government has issued a show cause order to an applicant, the potential prejudice to the Government is an important factor which should be considered in determining whether to grant a motion to withdraw an application.

It is indisputable that Applicant's conduct in engaging in a criminal conspiracy to distribute, and possess with intent distribute, 500 grams or more of cocaine, is egregious misconduct. Moreover, no regulation bars Applicant from immediately reapplying for a registration. I nonetheless hold, however, that the other factors support the conclusion that granting his withdrawal request in in the public interest.

Here, there has been no proceeding on the merits of the allegations and thus extensive resources have not been expended in the litigation and review of this case. Moreover, reviewing the allegations and the record submitted by the Government, I conclude that granting the withdrawal request will not prejudice the Government in the event Applicant reapplies in the future.

In this matter, the Government has proposed the denial of the application based on three sets of circumstances: (1) The alleged findings of an investigation conducted in 2000; (2) his 2010 conviction for violating 21 U.S.C. 846; and (3) the state board orders that were issued following his 2010 conviction. *Id.* at 6–8. However, in the event Applicant was to reapply, his conviction is not subject to relitigation in this proceeding and the Government can again rely on it as a basis to deny the application. See 21 U.S.C. 823(f)(3); *Robert L. Dougherty*, 76 FR 16823, 16830 (2011) (discussing *Robert A. Leslie*, 60 FR 14004, 14005 (1995); *Robert A. Leslie*, 64 FR 25908 (1999); and *Robert A. Leslie*, 68 FR 15227 (2003)). So too, the Government can rely on the state board orders, to the extent they add anything that is probative of whether granting a new application would be consistent with the public interest.

Indeed, the only potential prejudice that could accrue to the Government would be that with the passage of additional time, it would be unable to produce reliable evidence probative of the violations allegedly found in the investigation, which was conducted fourteen years ago, when Applicant was practicing in Pittsburgh, Pennsylvania. The Government cannot, however,

claim prejudice, because the evidence it submitted with its Request for Final Agency Action to support the allegations does not rise to the level of substantial evidence. Here, the evidence on these allegations was limited to an affidavit of a Diversion Investigator, with the Phoenix Office, who was assigned to the current matter in December 2012. While the DI's affidavit states that “[t]he matters contained in this declaration are based upon my personal knowledge, training, and experience,” and then makes several factual assertions regarding the 2000 investigation, the affidavit does not establish that the DI was personally involved in that investigation. See DI's Declaration, at 1–3. Moreover, the affidavit does not cite any documentary evidence that supports these factual assertions and the investigative record submitted by the Government contains no such evidence. Thus, were I to proceed to the merits of the Government's Request for Final Agency Action, I would be required to conclude that these allegations are not supported by substantial evidence.

Accordingly, I conclude that granting Applicant's withdrawal request will not prejudice the Government. Moreover, while some agency resources have been expended in the review of this matter, this was occasioned by the need to set forth the factors to be considered in determining whether the granting of a withdrawal request, which is made after the issuance of a show cause order, “is in the public interest.” 21 CFR 1301.16(a). Because I conclude that granting Applicant's request to withdraw his application “is in the public interest,” I grant his request. And because there is no longer an application to act upon, I hold that this case is now moot and dismiss the Order to Show Cause.

It is so ordered.

Dated: April 4, 2014.

Thomas M. Harrigan,
Deputy Administrator.

[FR Doc. 2014–08244 Filed 4–11–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, Justice.

ACTION: Meeting notice.

³ A review of the Agency's decision in *Liddy* shows that the respondent had dispensed over 42,000 controlled substance prescriptions for millions of dosage units, which were written by physicians to patients who resided in States where the former were not licensed to practice medicine and with whom they had not established a valid doctor-patient relationship, and thus, were issued outside of the usual course of professional practice, in violation of 21 CFR 1306.04(a). *Id.* at 48893–96.

SUMMARY: The purpose of this notice is to announce a meeting of the National Crime Prevention and Privacy Compact Council (Council) created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the Federal Government and 30 states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative federal-state system to exchange such records.

The United States Attorney General appointed 15 persons from state and federal agencies to serve on the Council. The Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index system for noncriminal justice purposes.

Matters for discussion are expected to include:

(1) Changes to the Security and Management Control Outsourcing Standards for Channelers and Non-Channelers.

(2) Update on the Compact Council's Civil Fingerprint Image Quality Pilot.

(3) SEARCH—2012 Final Biennial Survey Report.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Council or wishing to address this session of the Council should notify the Federal Bureau of Investigation (FBI) Compact Officer, Mr. Gary S. Barron at (304) 625-2803, at least 24 hours prior to the start of the session. The notification should contain the individual's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed and the time needed for the presentation. Individuals will ordinarily be allowed up to 15 minutes to present a topic.

DATES AND TIMES: The Council will meet in open session from 9 a.m. until 5 p.m., on May 14–15, 2014.

ADDRESSES: The meeting will take place at the Renaissance Portsmouth Hotel and Waterfront Conference Center, 425 Water Street, Portsmouth, Virginia, telephone (757) 673-3000.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mr. Gary S. Barron, FBI Compact Officer, Module D3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, telephone (304) 625-2803, facsimile (304) 625-2868.

Dated: March 28, 2014.

Gary S. Barron,

FBI Compact Officer, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 2014-08322 Filed 4-11-14; 8:45 am]

BILLING CODE 4410-02-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Radiation Sampling and Exposure Records

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) revision titled, "Radiation Sampling and Exposure Records," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 14, 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=201402-1219-002 (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, TTY 202-693-8064, (these are not toll-free numbers) 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-MSHA, 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: Departmental Information Compliance Management 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, TTY 202-693-8064, (these are not toll-free numbers) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to PRA approval for a modification to the Radiation Sampling and Exposure Records information collection. Specifically, Form MSHA-9000-4, "Record of Individual Exposure to Radon Daughters," is being clarified to reflect that a mine operator's response is mandatory. Data elements would remain unchanged.

Regulations 30 CFR 57.5040 requires a mine operator to calculate and record individual exposures to radon daughters on Form MSHA-4000-9 or equivalent forms acceptable to the MSHA. The calculations are based on the results of weekly sampling required by 30 CFR 57.5037. Records must be maintained by the operator and submitted annually to the MSHA. The sampling and recordkeeping requirement alerts the mine operator and the MSHA to possible failure in the radon daughter control system and permits timely appropriate corrective action. Data submitted to the MSHA is intended to establish a means by which the MSHA can assure compliance with underground radiation standards and to assure that miners can, on written request, have records of cumulative exposures made available to them or their estate, and to medical and legal representatives who have obtained written authorization. Mine Safety and Health Act section 103(h), 30 U.S.C. 813(h), authorizes this information collection.

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 1219-0003. The current approval is scheduled to expire on June 30, 2014; however, the DOL notes that existing information collection

requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 27, 2013 (78 FR 79009).

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 1219-0003. 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-MSHA.

Title of Collection: Radiation Sampling and Exposure Records.

OMB Control Number: 1219-0003.

Affected Public: Private sector—businesses or other for-profit.

Total Estimated Number of Respondents: 5.

Total Estimated Number of Responses: 505.

Total Estimated Annual Time Burden: 502 hours.

Total Estimated Annual Other Costs Burden: \$25.

Dated: April 8, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014-08334 Filed 4-11-14; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-83,183]

Page 1 Solutions, LLC, A Subsidiary of Network Affiliates, Web Site Development, Search Engine Optimization and Pay Per Click Departments, Golden, 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 December 13, 2013, applicable to workers of Page 1 Solutions, LLC, Web site Development, Search Engine Optimization and Pay Per Click Departments, Golden, Colorado. The workers are engaged in activities related to the supply of Web site development, Web site updates, search engine optimization and pay per click services. The notice was published in the **Federal Register** on January 10, 2014 (79 FR 1893).

At the request of a state workforce official, the Department reviewed the certification for workers of the subject firm. New information from the company shows that Page 1 Solutions, LLC is a subsidiary of Network Affiliates.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by an acquisition of services from a foreign country and who were paid through Network Affiliates.

The amended notice applicable to TA-W-83,183 is hereby issued as follows:

All workers of Page 1 Solutions, LLC, a subsidiary of Network Affiliates, Web site Development, Search Engine Optimization and Pay Per Click Departments, Golden, Colorado, who became totally or partially separated from employment on or after October 28, 2012, through December 13, 2015 and all workers in the group threatened with total or partial separation from employment on the date of certification through December 13, 2015, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 31st day of March 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014-08294 Filed 4-11-14; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-83,190]

Rockwell Collins, Inc., Service Solutions Organization, Dallas Service Center, Including On-Site Leased Workers From Allegis Group and Donatech Corporation, Irving, Texas; 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 January 8, 2014, applicable to workers of Rockwell Collins, Inc., Service Solutions Organization, Dallas Service Center, including on-site leased workers from Allegis Group, Irving, Texas. The workers are engaged in activities related to the supply of avionics equipment repair services. The notice was published in the **Federal Register** on January 28, 2013 (79 FR 4501).

At the request of a state workforce official, the Department reviewed the certification for workers of the subject firm. New information from the company shows that workers of Donatech Corporation were sufficiently under the operational control of the subject firm to be considered leased workers.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected as secondary workers.

The amended notice applicable to TA-W-83,190 is hereby issued as follows:

All workers of Rockwell Collins, Inc., Service Solutions Organization, Dallas Service Center, including on-site leased workers from Allegis Group and Donatech Corporation, Irving, Texas, who became totally or partially separated from employment on or after October 31, 2012 through January 8, 2016, and all workers in the group threatened with total or partial separation from employment on the date of certification through January 8, 2016, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 31st day of March 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014-08295 Filed 4-11-14; 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 and Alternative
Trade 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 (TA-W) number and alternative trade adjustment assistance (ATAA) by (TA-W) number issued during the period of March 24, 2014 through March 28, 2014.

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. Section (a)(2)(A) all of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the

articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected 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(b) of the Act must be met.

(1) significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

**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.

None.

**Affirmative Determinations for Worker
Adjustment Assistance and Alternative
Trade 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) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

85,095, Grove US LLC, Shady Grove, Pennsylvania. February 25, 2013.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

85,070, Time Machine Inc., Polk, Pennsylvania. February 12, 2013.

**Negative Determinations for Alternative
Trade Adjustment Assistance**

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

None.

**Negative Determinations for Worker
Adjustment Assistance and Alternative
Trade 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.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

85,025, Philips Electronics North America Corporation, Bothell, Washington.

85,025A, Philips Electronics North America Corporation, Andover, Massachusetts.

85,025B, Philips Electronics North America Corporation, Pittsburg, Pennsylvania.

85,069, Allstate Insurance, Roanoke, Virginia.

85,076, Support.com Inc., Redwood City, California.

85,090, Pixel Playground, Inc. Woodland Hills, California.

85,103, Guru Denim, Inc., Vernon, California.

85,111, Windstream Corporation,
Dalton, Georgia.
85,131, Mitsubishi Nuclear Energy
Systems, Inc. Texas.

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 USC 2271), the Department initiated investigations of these petitions.

None.

I hereby certify that the aforementioned determinations were issued during the period of March 24, 2014 through March 28, 2014. 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 3rd day of April 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014-08293 Filed 4-11-14; 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 March 24, 2014 through March 28, 2014.

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).
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) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA-W number	Subject firm	Location	Impact date
82,995	King Brothers Woodworking, Inc., King Brothers Wood, LLC	Union Gap, WA.	

I hereby certify that the aforementioned determinations were issued during the period of March 24, 2014 through March 28, 2014. 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 3rd day of April 2014.
Michael W. Jaffe,
Certifying Officer, Office of Trade Adjustment Assistance.
[FR Doc. 2014-08291 Filed 4-11-14; 8:45 am]
BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-85,000]

Johnson Controls, Inc., Building Efficiency Division, Large Tonnage Water Chiller Assembly and Fabrication Including Workers Paid Through York International and Including On-Site Leased Workers From VIP Personnel Services San Antonio, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 28, 2014, applicable to workers of Johnson Controls, Inc., Building Efficiency Division, Large Tonnage and Water Chiller Assembly and Fabrication, including on-site leased workers from

VIP Personnel Services, San Antonio, Texas. The workers are engaged in activities related to the production of large tonnage water chillers. The notice was published in the **Federal Register** on March 14, 2014 (79 FR 14540).

At the request of a state workforce official, the Department reviewed the certification for workers of the subject firm. New information from the company shows that workers were paid through York International, a subsidiary of Johnson Controls, Inc.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in production to a foreign country that is party to a free trade agreement and who were paid through York International.

The amended notice applicable to TA-W-85,000 is hereby issued as follows:

All workers of Johnson Controls, Inc., Building Efficiency Division, Large Tonnage and Water Chiller Assembly and Fabrication, including workers paid through York International and including on-site leased workers from VIP Personnel Services, San Antonio, Texas, who became totally or partially separated from employment on or after January 2, 2013, through February 28, 2016 are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 1st day of April 2014.
Michael W. Jaffe,
Certifying Officer, Office of Trade Adjustment Assistance.
[FR Doc. 2014-08296 Filed 4-11-14; 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 April 24, 2014.

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 April 24, 2014.

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 3rd day of April 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[16 TAA Petitions instituted between 3/24/14 and 3/28/14]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
85169	Cargill, Inc. (Union)	Raleigh, NC	03/24/14	02/14/14
85170	Graham Packaging Company(Union)	Berkeley, MO	03/24/14	03/15/14
85171	Rosboro Lumber (Union)	Springfield, OR	03/25/14	03/22/14
85172	Paramount Fitness (State/One-Stop)	Los Angeles, CA	03/25/14	03/21/14
85173	Xerox Corporation (Workers)	Waite Park, MN	03/25/14	03/21/14
85174	American Telegraph and Telephone (AT&T) (Union)	Pittsburgh, PA	03/25/14	03/18/14
85175	Virtual Training Company Inc (Workers)	Stephens City, VA	03/25/14	03/24/14
85176	Scott DC Power Products (Company)	Alamogordo, NM	03/25/14	03/24/14
85177	Advanced Motors and Drives Inc. (Company)	East Syracuse, NY	03/25/14	03/24/14
85178	Cardinal Health (Workers)	Woodbury, MN	03/25/14	03/21/14
85179	Fifty Third Bancorp (State/One-Stop)	Cincinnati, OH	03/26/14	03/25/14
85180	Hewlett Packard (Workers)	Boise, ID	03/27/14	03/26/14
85181	Innovative Hearth Products (Union)	Union City, TN	03/27/14	03/26/14
85182	MedQuist/M*Modal (Nationwide @Home Wrks) reporting to Mt. Laurel, NJ (State/One-Stop).	Franklin, TN	03/28/14	03/27/14
85183	Hyundai Merchant Marine (Workers)	Itasca, IL	03/28/14	03/27/14
85184	Oracle Corporation (State/One-Stop)	Broomfield, CO	03/28/14	03/27/14

[FR Doc. 2014-08292 Filed 4-11-14; 8:45 am]

BILLING CODE 4510-FN-P

BUREAU OF LABOR STATISTICS

Data Users Advisory Committee; Request for Nominations

AGENCY: Bureau of Labor Statistics (BLS).

ACTION: Request for nominations to the BLS Data Users Advisory Committee.

SUMMARY: The BLS is soliciting new members for the Data Users Advisory Committee (DUAC). The current membership expires on January 14, 2015. The DUAC provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic, and government communities, on technical matters related to the collection, analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on the broader aspects of its overall mission and function. The Committee will consist of 20 members and will be chosen from a cross-section of individuals who represent a balance of expertise across a broad range of BLS program areas, including employment and unemployment statistics, occupational safety and health statistics, compensation measures, price indexes, and productivity measures; or other areas related to the subject matter of

BLS programs. BLS invites persons interested in serving on the DUAC to submit their names for consideration for committee membership.

DATES: Nominations for the DUAC membership should be postmarked by May 9, 2014.

ADDRESSES: Nominations for the DUAC membership should be sent to: Commissioner Erica Groshen, U.S. Bureau of Labor Statistics, 2 Massachusetts Avenue NE., Room 4040, Washington, DC 20212.

FOR FURTHER INFORMATION CONTACT: Kathy Mele, Deputy Associate Commissioner, U.S. Bureau of Labor Statistics, 2 Massachusetts Avenue NE., Office of Publications and Special Studies, Room 4110, Washington, DC 20212. Telephone: (202)691-6102. This is not a toll free number.

SUPPLEMENTARY INFORMATION: BLS intends to renew membership in the DUAC for another three years. The BLS operates over two dozen surveys that measure employment and unemployment, compensation, worker safety, productivity, and consumer and producer price movements. BLS provides a wealth of economic data and analyses to support public and private decision-making. The DUAC was established to provide advice to the Commissioner of Labor Statistics on the priorities of data users, suggestions concerning the addition of new programs, changes in emphasis of existing programs or cessation of obsolete programs, and advice on

potential innovations in data analysis, dissemination, and presentation.

Nominations: BLS is looking for committed DUAC members who have a strong interest in, and familiarity with, BLS data. The Agency is looking for nominees who use and have a comprehensive understanding of economic statistics. The U.S. Bureau of Labor Statistics is committed to bringing greater diversity of thought, perspective, and experience to its advisory committees. Nominees from all races, gender, age, and disabilities are encouraged to apply. Interested persons may nominate themselves or may submit the name of another person who they believe to be interested in and qualified to serve on the DUAC. Nominations may also be submitted by organizations. Nominations should include the name, address, and telephone number of the candidate. Each nomination should include a summary of the candidate's training or experience relating to BLS data specifically, or economic statistics more generally. BLS will conduct a basic background check of candidates before their appointment to the DUAC. The background check will involve accessing publicly available, Internet-based sources.

Authority: This notice was prepared in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, the Secretary of Labor has determined that the Bureau of Labor Statistics Data Users Advisory

Committee is in the public interest in connection with the performance of duties imposed upon the Commissioner of Labor Statistics by 29 U.S.C. 1 and 2. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Signed at Washington, DC, this 9th day of April 2014.

Kimberley D. Hill,

*Chief, Division of Management Systems,
Bureau of Labor Statistics.*

[FR Doc. 2014-08335 Filed 4-11-14; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2009-0025]

Underwriters Laboratories Inc.; Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of Underwriters Laboratories, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7 and presents the Agency's preliminary finding to grant the application. Additionally, OSHA proposes incorporating two new test standards into the NRTL Program's list of appropriate test standards.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before April 29, 2014.

ADDRESSES: Submit comments by any of the following methods:

1. *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.

2. *Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693-1648.

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA-2009-0025, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW.,

Room N-2625, Washington, DC 20210; telephone: (202) 693-2350 (TTY number: (877) 889-5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.-4:45 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA-2009-0025). OSHA will place all submissions, including any personal information provided, in the public docket without revision, and these submissions will be available online at <http://www.regulations.gov>.

5. *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. All documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

6. *Extension of comment period:* Submit requests for an extension of the comment period on or before April 29, 2014 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3655, Washington, DC 20210, or by fax to (202) 693-1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3647, Washington, DC 20210; telephone: (202) 693-1999; email: Meilinger.frankis2@dol.gov.

General and technical information: Contact Mr. David W. Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW.,

Room N-3655, Washington, DC 20210; phone: (202) 693-2110 or email: johnson.david.w@dol.gov.

SUPPLEMENTAL INFORMATION:

I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that Underwriters Laboratories, Inc. (UL) is applying for expansion of its current recognition as an NRTL. UL requests the addition of 21 test standards to its NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified in Title 29, Code of Federal Regulations, Section 1910.7 (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope of recognition. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition, and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL, including UL, which details the NRTL's scope of recognition. These pages are available from the OSHA Web site at <http://www.osha.gov/dts/otpca/nrtl/index.html>.

UL currently has 34 facilities (sites) recognized by OSHA for product testing and certification, with its headquarters located at: Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062. A complete list of UL's scope of recognition is available at <http://www.osha.gov/dts/otpca/nrtl/ul.html>.

II. General Background on the Application

UL submitted an application, dated March 26, 2013 (see Exhibit 1), to expand its recognition to include multiple additional test standards. The Office of Technical Programs and

Coordination Activities (OTPCA) staff performed a comparability analysis and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application. Table 1 below lists appropriate test standards found within UL’s application for expansion for testing and

certification of products under the NRTL Program. Two of these test standards, UL 66 and UL 8750, are new to the NRTL Program, and OSHA preliminarily determined that they are “appropriate test standards” within the meaning of 29 CFR 1910.7(c).

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN UL’S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
ANSI/UL 2208	Solvent Distillation Units.
IEEE C37.20.7	IEEE Guide for Testing Metal-Enclosed Switchgear Rated Up to 38 kV for Internal Arcing Faults.
ANSI/UL 8750 *	Light Emitting Diode (LED) Equipment for Use in Lighting Products.
ANSI/UL 448B	Residential Fire Pumps Intended for One- and Two-Family Dwellings and Manufactured Homes.
ANSI/UL 448C	Stationary, Rotary-Type, Positive-Displacement Pumps for Fire Protection Service.
ANSI/UL 62368-1	Audio/Video, Information and Communication Technology Equipment—Part 1: Safety Requirements.
ANSI/UL 50E	Enclosures for Electrical Equipment, Environmental Considerations.
ANSI/UL 61800-5-1	Adjustable Speed Electrical Power Drive Systems—Part 5-1: Safety Requirements—Electrical, Thermal and Energy.
ANSI/UL 66 *	Fixture Wire.
ANSI/UL 2239	Hardware for the Support of Conduit, Tubing, and Cable.
ANSI/UL 62275	Cable Management Systems—Cable Ties for Electrical Installations.
ANSI/UL 60335-2-40	Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electrical Heat Pumps, Air-Conditioners and Dehumidifiers.
ANSI/UL 2560	Emergency Call Systems for Assisted Living and Independent Living Facilities.
ANSI/UL 2572	Mass Notification Systems.
ANSI/UL 2577	Suspended Ceiling Grid Low Voltage Systems and Equipment.
ANSI/UL 8752	Organic Light Emitting Diode (OLED) Panels.
ANSI/UL 60745-2-13	Hand-Held Motor-Operated Electric Tools—Safety— Part 2-13: Particular Requirements For Chain Saws.
ANSI/UL 60745-2-15	Hand-Held Motor-Operated Electric Tools—Safety—Part 2-15: Particular Requirements for Hedge Trimmers.
ANSI/UL 2586	Hose Nozzle Valves.
ANSI/UL 2238	Cable Assemblies and Fittings for Industrial Control and Signal Distribution.
UL 6142	Small Wind Turbine Systems.

* Test standards new to the NRTL Program.

III. Preliminary Findings on the Application

OSHA’s preliminary findings:
 1. UL submitted an acceptable application for expansion of its scope of recognition. OSHA’s review of the application file and its comparability analysis indicate that UL can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of 21 test standards for NRTL testing and certification listed above. This preliminary determination does not constitute an interim or temporary approval of UL’s application.
 2. The UL 66 and UL 8750 test standards are appropriate test standards, and OSHA proposes to include these test standards in the NRTL Program’s list of appropriate test standards.

OSHA welcomes public comment as to whether UL meets the requirements of 29 CFR 1910.7 for expansion of its recognition as an NRTL. OSHA also seeks comments as to whether the UL 66 and UL 8750 test standards are appropriate test standards under the NRTL Program. Comments should consist of pertinent written documents and exhibits. Commenters needing more

time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the publicly available information in UL’s application, including pertinent documents (e.g., exhibits) and all submitted comments, contact the Docket Office, Room N-2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address; these materials also are available online at <http://www.regulations.gov> under Docket No OSHA-2009-0025.

The OTPCA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will recommend to the Assistant Secretary for Occupational Safety and Health whether to grant UL’s application for expansion of its scope of recognition and whether to add the two test

standards to the NRTL list of appropriate test standards. The Assistant Secretary will make the final decision on granting the application and adding the two new test standards. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of its final decision in the **Federal Register**.

IV. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor’s Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on April 9, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014-08306 Filed 4-11-14; 8:45 am]

BILLING CODE 4510-26-P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m. to 3:30 p.m., Thursday, April 24, 2014.

PLACE: The offices of the Morris K. Udall and Stewart L. Udall Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

STATUS: This meeting of the Board of Trustees will be open to the public, unless it is necessary for the Board to consider items in executive session.

MATTERS TO BE CONSIDERED: (1) Appropriations Update; (2) Financial Update; (3) Consent Agenda Approval, including the Minutes of the November 12, 2013, Board of Trustees Meeting and Program Reports; (4) Resolution regarding Transfer of Funds to the Native Nations Institute for Leadership, Management, and Policy; (5) Internal Controls Update; (6) Board of Trustees Ethics Training; (7) Contracting Update; (8) U.S. Institute for Environmental Conflict Resolution Sustainability Plan Update; (9) Review of Foundation HR Policies; and (10) Internal Personnel Matters.

PORTIONS OPEN TO THE PUBLIC: All agenda items except as noted below.

PORTIONS CLOSED TO THE PUBLIC: Executive Session to Discuss Internal Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Philip J. Lemanski, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901-8500.

Dated: April 7, 2014.

Philip J. Lemanski,

Executive Director, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.

[FR Doc. 2014-08239 Filed 4-11-14; 8:45 am]

BILLING CODE 6820-FN-M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board's Election Committee, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C.

1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE & TIME: Friday, April 18, 2014, 3:00 p.m.—4:00 p.m. EDT.

SUBJECT MATTER: Chairman's remarks; discussion of nominations for NSB Chairman and Vice Chairman for the 2104—2016 term.

STATUS: Closed

This meeting will be held by teleconference. Please refer to the National Science Board Web site www.nsf.gov/nsb for additional information and schedule updates (time, place, subject matter or status of meeting). Point of contact for this meeting is Ann Bushmiller (abushmil@nsf.gov).

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2014-08411 Filed 4-10-14; 11:15 am]

BILLING CODE 7555-01-P

NATIONAL TRANSPORTATION SAFETY BOARD

Public Forum—Rail Safety: Transportation of Crude Oil and Ethanol

On Tuesday and Wednesday, April 22–23, 2014, The National Transportation Safety Board (NTSB) will convene a forum titled *Rail Safety: Transportation of Crude Oil and Ethanol*. The forum will begin at 9:00 a.m., on both days and is open to all. Attendance is free, and no registration is required. NTSB Chairman Deborah A.P. Hersman will serve as the presiding officer of the forum, and all five NTSB board members will serve as members of the Board of Inquiry. The forum is organized into four topic areas covering:

- Tank Car Design, Construction, and Crashworthiness
- Rail Operations and Approaches to Risk Management
- Emergency Response to Tank Car Releases of Crude Oil and Ethanol
- Federal Oversight and Industry Initiatives Related to Crude Oil and Ethanol Transportation by Rail

The forum will also review tank car accidents involving crude oil and ethanol releases and the NTSB recommendations associated with these accidents. The forum's goal is to better understand how railroads currently manage crude oil and ethanol transportation, how to reduce accidents and improve emergency preparedness,

and what steps are needed to improve tank car design to minimize risks to the safety of first responders and the public during and immediately following accidents. In addition, the forum will update the Board on the progress being made to address NTSB recommendations dealing with tank car design, emergency response, and risk assessment. Invited panelists will include the Federal Railroad Administration, Pipeline and Hazardous Materials Safety Administration, railroad owners and operators, researchers, emergency responders, and industry groups. Below is the preliminary agenda

Tuesday, April 22, 2014 (9:00 a.m.–5:00 p.m.)

1. Opening Statement by Chairman Hersman
2. Opening presentations by the NTSB
3. Presentations on: *Tank Car Design, Construction, and Crashworthiness*
4. Questions from the Technical Panel and Board of Inquiry
5. Presentations on: *Rail Operations and Approaches to Risk Management*
6. Questions from the Technical Panel and Board of Inquiry
7. Closing Statement by Chairman Hersman

Wednesday, April 23, 2014 (9:00 a.m.–5:00 p.m.)

1. Opening Statement by Chairman Hersman
2. Presentations on: *Emergency Response to Tank Car Releases of Crude Oil and Ethanol*
3. Questions from the Technical Panel and Board of Inquiry
4. Presentations on: *Federal Oversight and Industry Initiatives Related to Crude Oil and Ethanol Transportation by Rail*
5. Questions from the Technical Panel and Board of Inquiry
6. Closing Statement by Chairman Hersman

The full agenda and a list of participants can be found at the following web address: <http://www.nts.gov/crudeandethanolforum>.

The hearing docket is DCA14SS004.

The forum will be held in the NTSB Board Room and Conference Center, located at 429 L'Enfant Plaza E. SW., Washington, DC. The public can view the hearing in person or by live webcast at www.nts.gov. Webcast archives are generally available by the end of the next day following the hearing, and webcasts are archived for a period of 3 months from after the date of the event.

Individuals requiring reasonable accommodation and/or wheelchair access directions should contact Ms.

Rochelle Hall at (202) 314-6305 or by email at Rochelle.Hall@ntsb.gov by Wednesday, April 16, 2014.

NTSB Media Contact: Eric Weiss—eric.weiss@ntsb.gov.

NTSB Forum Manager: Matthew Nicholson—matthew.nicholson@ntsb.gov.

Dated: April 4, 2014.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2014-08262 Filed 4-11-14; 8:45 am]

BILLING CODE 7533-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC-2014-0083]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Notice of Enforcement Discretion for Operating Power Reactors and Gaseous Diffusion Plants (NRC Enforcement Policy).

2. *Current OMB approval number:* 3150-0136.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Those licensees that voluntarily request enforcement discretion through the notice of enforcement discretion (NOED) process, and are granted enforcement discretion.

5. *The number of annual respondents:* 12.

6. *The number of hours needed annually to complete the requirement or request:* 1492.

7. *Abstract:* The NRC's Enforcement Policy includes the circumstances in which the NRC may grant an NOED. On occasion, circumstances arise when a power plant licensee's compliance with

a Technical Specification (TS) Limiting Condition for Operation or any other license condition would involve an unnecessary plant shutdown. Similarly, for a gaseous diffusion plant, circumstances may arise where compliance with a Technical Safety Requirement (TSR) or other condition would unnecessarily call for a total plant shutdown, or, compliance would unnecessarily place the plant in a condition where safety, safeguards or security features were degraded or inoperable.

In these circumstances, a licensee or certificate holder may request that the NRC exercise enforcement discretion, and the NRC staff may choose to not enforce the applicable TS, TSR, or other license or certificate condition. This enforcement discretion is designated as a NOED.

A licensee or certificate holder seeking the issuance of an NOED must document the safety basis for the request, including an evaluation of the safety significance and potential consequences of the proposed request, a description of proposed compensatory measures, a justification for the duration of the request, the basis for the licensee's or certificate holder's conclusion that the request does not have a potential adverse impact on the public health and safety, and does not involve adverse consequences to the environment, and any other information the NRC staff deems necessary before making a decision to exercise discretion.

In addition, the NRC's Enforcement Policy includes a provision allowing licensees to voluntarily adopt fire protection requirements contained in the National Fire Protection Association Standard 805, "Performance Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001 Edition" (NFPA 805). Licensees who wish to implement the risk-informed process in NFPA 805 must submit a letter of intent to the NRC. Licensees who wish to withdraw from the NFPA 805 risk informed process must submit a letter of retraction.

Submit, by June 13, 2014, comments that address the following questions:

1. *Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?*

2. *Is the burden estimate accurate?*

3. *Is there a way to enhance the quality, utility, and clarity of the information to be collected?*

4. *How can the burden of the information collection be minimized, including the use of automated*

collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly-available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/>. The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC-2014-0083. You may submit your comments by any of the following methods: Electronic comments go to <http://www.regulations.gov> and search for Docket No. NRC-2014-0083. Mail comments to Acting NRC Clearance Officer, Kristen Benney (T-5 F50), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Questions about the information collection requirements may be directed to the Acting NRC Clearance Officer, Kristen Benney (T-5 F50), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6355, or by email to INFOCOLLECTS.Resource@NRC.GOV.

Dated at Rockville, Maryland, this 8th day of April, 2014.

For the Nuclear Regulatory Commission.

Kristen Benney,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014-08252 Filed 4-11-14; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC-2014-0027]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Design Information Questionnaire—IAEA N-71 and Associated Forms N-72, N-73, N-74, N-75, N-76, N-77, N-91, N-92, N-93, N-94.
2. *Current OMB approval number:* 3150-0056.
3. *How often the collection is required:* It is estimated that this collection is required approximately 1 time per year.
4. *Who is required or asked to report:* Licensees of facilities on the U.S. eligible list who have been notified in writing by the NRC to submit the form.
5. *The number of annual respondents:* 2.
6. *The number of hours needed annually to complete the requirement or request:* 360 reporting hours.
7. *Abstract:* In order for the United States (U.S.) to fulfill its responsibilities as a participant in the U.S./International Atomic Energy Agency (IAEA) Safeguards Agreement, the NRC must collect information from licensees about their installations and provide it to the IAEA. Licensees of facilities that appear on the U.S. eligible list and have been notified in writing by the NRC are required to complete and submit a Design Information Questionnaire, IAEA Form N-71 (and the appropriate associated IAEA Form) or Form N-91, to provide information concerning their installation for use by the IAEA.

Submit, by June 13, 2014, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly-available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O-1F21,

One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/>. The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC-2014-0027. You may submit your comments by any of the following methods: Electronic comments go to <http://www.regulations.gov> and search for Docket No. NRC-2014-0027. Mail comments to Acting NRC Clearance Officer, Kristen Benney (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Questions about the information collection requirements may be directed to the Acting NRC Clearance Officer, Kristen Benney (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6355, or by email to INFOCOLLECTS.Resource@NRC.GOV.

Dated at Rockville, Maryland, this 8th day of April 2014.

For the Nuclear Regulatory Commission.

Kristen Benney,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014-08251 Filed 4-11-14; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2014-0001]

Sunshine Act Meeting Notice

DATE: Weeks of April 14, 21, 28, May 5, 12, 19, 2014.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of April 14, 2014

There are no meetings scheduled for the week of April 14, 2014.

Week of April 21, 2014—Tentative

There are no meetings scheduled for the week of April 21, 2014.

Week of April 28, 2014—Tentative

There are no meetings scheduled for the week of April 28, 2014.

Week of May 5, 2014—Tentative

Thursday, May 8, 2014

9:00 a.m. Briefing on Subsequent License Renewal (Public Meeting) (Contact: William (Butch) Burton, 301-415-6332).

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.
3:00 p.m. Discussion of Security Issues (Closed Ex. 1)

3:30 p.m. Discussion of Management and Personnel Issues (Closed Ex. 2 and 6)

Friday, May 9, 2014

9:00 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes (Public Meeting) (Contact: Sophie Holiday, 301-415-7865).

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.

Week of May 12, 2014—Tentative

Monday, May 12, 2014

9:30 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

Week of May 19, 2014—Tentative

There are no meetings scheduled for the week of May 19, 2014.

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301-415-1292. Contact person for more information: Rochelle Baval, 301-415-1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/public-involve/public-meetings/schedule.html>.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301-287-0727, or by email at Kimberly.Meyer-Chambers@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically.

If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969), or send an email to Darlene.Wright@nrc.gov.

Dated: April 10, 2014.

Richard Laufer,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2014-08482 Filed 4-10-14; 4:15 pm]

BILLING CODE 7590-01-P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). This process is conducted in accordance with 5 CFR 1320.10. Peace Corps received no comments during the 60-day notice.

DATES: Comments regarding this collection must be received on or before May 14, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent via email to: oir_submission@omb.eop.gov or fax to: 202-395-3086. Attention: Desk Officer for Peace Corps.

FOR FURTHER INFORMATION CONTACT: Denora Miller, FOIA/Privacy Act Officer, Peace Corps, 1111 20th Street NW., Washington, DC 20526, (202) 692-1236, or email at pcf@peacecorps.gov.

SUPPLEMENTARY INFORMATION: Within the purview of Coverdell World Wise Schools, the Speakers Match program connects an educator with a returned Peace Corps Volunteer to present about his/her overseas experience. The interaction between the returned Volunteer, the educator, and his or her students is used to foster classroom activities and learning experiences relating to the Volunteer's country of service and the Peace Corps. In order to participate in the program and be matched with a returned Volunteer, the educator must complete the Speakers Match Online Request Form. This form

is available on the Peace Corps World Wise Schools Web site under the Speakers Match section.

Title: World Wide Schools-Speakers Match: Request for a Speaker.

OMB Control Number: 0420-0539.

Type of Request: Revision of a Currently Approved Collection.

Affected Public: Individuals and households.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

a. Estimated number of respondents: 300.

b. Estimated average burden per response: 10 minutes.

c. Frequency of response: One time.

d. Annual reporting burden: 50 hours.

e. Estimated annual cost to respondents: \$0.00.

General Description of Collection: The Speakers Match Online Request Form is the first point of contact with the participating educator. The information is used to make a suitable match between the educator and a returned Peace Corps Volunteer. The information will be collected as a one-time submission on a continuous basis and with permission may be shared with the media, Congress, returned Volunteer groups, educational institutions, and other government agencies.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on April 1, 2014.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2014-08268 Filed 4-11-14; 8:45 am]

BILLING CODE 6051-01-P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information

collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Peace Corps received no comments during the 60-day notice.

DATES: Comments regarding this collection must be received on or before May 14, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent via email to: oir_submission@omb.eop.gov or fax to: 202-395-3086. Attention: Desk Officer for Peace Corps.

FOR FURTHER INFORMATION CONTACT: Denora Miller, FOIA/Privacy Act Officer, Peace Corps, 1111 20th Street NW., Washington, DC 20526, (202) 692-1236, or email at pcf@peacecorps.gov.

SUPPLEMENTARY INFORMATION: The Peace Corps and Paul D. Coverdell World Wise Schools need this information officially to enroll educators in the Correspondence Match program. The information is used to make suitable matches between the educators and currently serving Peace Corps Volunteers.

Title: Correspondence Match Educator Online Enrollment Form.

OMB Control Number: 0420-0540.

Type of Request: Revision of a Currently Approved Collection.

Affected Public: Individuals and households.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

a. Estimated number of respondents: 3,000.

b. Estimated average burden per response: 10 minutes.

c. Frequency of response: One time.

d. Annual reporting burden: 500 hours.

e. Estimated annual cost to respondents: \$0.00.

General Description of Collection: The Correspondence Match Educator Enrollment Form is the first point of contact with the participating educator. It is Coverdell World Wise Schools' fundamental source of information from educators interested in participating in the Correspondence Match program. The information is used to make a suitable match between the educator and a Peace Corps Volunteer serving overseas. The information will be collected continuously as teachers

choose to enroll, or continue participation, in the Correspondence Match program.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on April 1, 2014.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2014-08277 Filed 4-11-14; 8:45 am]

BILLING CODE 6051-01-P

PEACE CORPS

Information Collection Request Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-day notice and request for comments.

SUMMARY: Peace Corps as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on the "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery. This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection.

DATES: Comments regarding this collection must be received on or before June 13, 2014.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA/Privacy Act Officer. Denora Miller can be contacted by telephone at 202-692-1236 or email at pcfpr@peacecorps.gov. Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 0420-0545.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Individuals and households.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

Average Expected Annual Number of Activities: 10.

Annual Number of Respondents: 8,226.

Annual Responses: 8,226.

Frequency of Response: Once per request.

Average Minutes per Response: 49.

Annual Burden Hours: 5,039.

General Description of Collection: The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on Peace Corps' services will be unavailable.

Peace Corps will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
 - The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
 - The collections are non-controversial and do not raise issues of concern to other Federal agencies;
 - Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
 - Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
 - Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
 - Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
 - Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.
- Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs,

and other matters that are commonly considered private.

Request for Comment: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection Regulations.gov. 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 Office of Management and Budget control number.

This notice is issued in Washington, DC, on April 4, 2014.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2014-08276 Filed 4-11-14; 8:45 am]

BILLING CODE 6051-01-P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and Open Season Web site, 3206-0201

AGENCY: Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Operations, Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) 3206-0201, Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and the Open Season Web site, Open Season Online. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104-13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104-106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on November 29, 2013 at Volume 78 FR 71676 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until May 14, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System, and the Open Season Web site, Open Season Online, are used by retirees and survivors. They collect information for changing FEHB enrollments, collecting dependent and other insurance information for self and family enrollments, requesting plan brochures, requesting a change of address, requesting cancellation or suspension of FEHB benefits, asking to make payment to the Office of Personnel Management when the FEHB payment is greater than the monthly annuity amount, or for requesting FEHB plan accreditation and Customer Satisfaction Survey information.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and Open Season Online.

OMB Number: 3206-0201.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 350,100.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 58,350 hours.

U.S. Office of Personnel Management.

Katherine Archuleta,
Director.

[FR Doc. 2014-08313 Filed 4-11-14; 8:45 am]

BILLING CODE 6325-38-P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Designation of Beneficiary: Civil Service Retirement System (CSRS), 3206-0142

AGENCY: Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206-0142, Designation of Beneficiary: Civil Service Retirement System. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104-13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104-106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on November 7, 2013 at Volume 78 FR 66972 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until May 14, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503,

Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

SF 2808 is used by persons covered by CSRS to designate a beneficiary to receive the lump sum payment due from the Civil Service Retirement and Disability Fund in the event of their death.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Designation of Beneficiary: Civil Service Retirement System.

OMB Number: 3206-0142.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 2,000.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 500.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014-08314 Filed 4-11-14; 8:45 am]

BILLING CODE 6325-38-P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; February 2014

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from February 1, 2014, to February 28, 2014.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202-606-2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the Federal Register at www.gpo.gov/fdsys/. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

- 18. Environmental Protection Agency. (Sch. A 213.3118)
- 24. Board of Governors, Federal Reserve System (Sch. A 213.3124)
 - (a) All Positions

Schedule B

No Schedule B authorities to report during February 2014.

Schedule C

The following Schedule C appointing authorities were approved during February 2014.

Agency name	Organization name	Position title	Authorization No.	Effective date
ADMINISTRATIVE CONFERENCE OF THE UNITED STATES.	Administrative Conference of the United States.	Executive Assistant	AA140001	2/28/2014
DEPARTMENT OF AGRICULTURE.	Office of Communications	Press Secretary	DA140035	2/7/2014
DEPARTMENT OF COMMERCE	Office of Executive Secretariat	Confidential Assistant/Editor	DC140052	2/5/2014
CONSUMER PRODUCT SAFETY COMMISSION.	Office of Commissioners	Special Assistant (Legal)	PS140005	2/28/2014

Agency name	Organization name	Position title	Authorization No.	Effective date
COUNCIL ON ENVIRONMENTAL QUALITY.	Council on Environmental Quality	Executive Assistant	EQ140006	2/28/2014
DEPARTMENT OF DEFENSE	Office of Assistant Secretary of Defense (Legislative Affairs). Washington Headquarters Services.	Special Assistant	DD140021	2/5/2014
	Washington Headquarters Services.	Defense Fellow	DD140022	2/5/2014
	Washington Headquarters Services.	Defense Fellow	DD140023	2/5/2014
	Washington Headquarters Services.	Defense Fellow	DD140024	2/5/2014
	Office of Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD140041	2/11/2014
	Office of the Under Secretary of Defense (Policy).	Special Assistant for Asian and Pacific Security Affairs.	DD140018	2/24/2014
	Office of the Under Secretary of Defense (Personnel and Readiness).	Special Assistant the Under Secretary of Defense (Personnel and Readiness).	DD140020	2/24/2014
DEPARTMENT OF EDUCATION	Office of Vocational and Adult Education.	Confidential Assistant	DB140031	2/3/2014
	Office of the Secretary	Deputy White House Liaison	DB140034	2/3/2014
	Office of the Secretary	Confidential Assistant	DB140035	2/3/2014
	Office of Legislation and Congressional Affairs.	Confidential Assistant	DB140037	2/5/2014
	Office of the Secretary	Deputy Chief of Staff for Operations.	DB140036	2/7/2014
	Office of Postsecondary Education	Special Assistant	DB140038	2/11/2014
	Office of Communications and Outreach.	Confidential Assistant	DB140040	2/20/2014
	Office of Planning, Evaluation and Policy Development.	Deputy Assistant Secretary for Planning and Policy Development.	DB140041	2/25/2014
	Office of the Secretary	Special Assistant	DB140042	2/28/2014
DEPARTMENT OF ENERGY	National Nuclear Security Administration.	Senior Advisor for Reactors and Nuclear Power Generation.	DE140035	2/10/2014
	Assistant Secretary for Energy Efficiency and Renewable Energy. Loan Programs Office	Director of Lab Commercialization Impact.	DE140037	2/10/2014
	Operations Staff	Senior Advisor	DE140023	2/11/2014
ENVIRONMENTAL PROTECTION AGENCY.		Deputy Director for Scheduling and Advance.	EP140014	2/4/2014
	Office of the Associate Administrator for Policy.	Deputy Associate Administrator for Policy.	EP140015	2/7/2014
	Office of the Associate Administrator for External Affairs and Environmental Education.	Press Secretary	EP140018	2/28/2014
EXPORT-IMPORT BANK	Office of Communications	Speechwriter	EB140003	2/5/2014
FEDERAL ENERGY REGULATORY COMMISSION.	Office of the Chairman	Confidential Assistant	DR140001	2/20/2014
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Secretary	Confidential Assistant	DH140030	2/4/2014
	Office of the Assistant Secretary for Public Affairs.	Deputy Director for Speechwriting	DH140032	2/4/2014
	Office of the Assistant Secretary for Children and Families.	Policy Advisor for Early Childhood	DH140033	2/4/2014
	Office of the Assistant Secretary for Children and Families.	Policy Advisor, Administration for Children and Families.	DH140034	2/4/2014
	Office of the Assistant Secretary for Health.	Director of Communications	DH140042	2/28/2014
DEPARTMENT OF HOMELAND SECURITY.	Office of the General Counsel	Confidential Assistant	DM140088	2/3/2014
	Office of the Under Secretary for National Protection and Programs Directorate.	Confidential Assistant	DM140089	2/10/2014
	Office of the Assistant Secretary for Policy.	Senior Advisor	DM140039	2/25/2014
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Sustainable Housing and Communities.	Senior Advisor	DU140009	2/14/2014
	Office of Housing	Senior Advisor/Chief of Staff	DU140008	2/20/2014
DEPARTMENT OF JUSTICE	Civil Rights Division	Senior Counselor	DJ140024	2/5/2014
	Office of the Associate Attorney General.	Confidential Assistant	DJ140031	2/12/2014
DEPARTMENT OF LABOR	Office of Chief Financial Officer	Senior Advisor	DL140014	2/7/2014
NATIONAL TRANSPORTATION SAFETY BOARD.	Office of Board Members	Special Assistant	TB140002	2/24/2014

Agency name	Organization name	Position title	Authorization No.	Effective date
OFFICE OF SCIENCE AND TECHNOLOGY POLICY. SECURITIES AND EXCHANGE COMMISSION. SMALL BUSINESS ADMINISTRATION.	Office of Science and Technology Policy.	Policy Advisor	TS140003	2/7/2014
	Office of the Chief Operating Officer.	Writer-Editor	SE140001	2/28/2014
	Office of Government Contracting and Business Development.	Senior Advisor	SB140008	2/10/2014
DEPARTMENT OF STATE	Office of Entrepreneurial Development.	Director of Clusters and Skills Initiatives.	SB140011	2/12/2014
	Office of the Under Secretary for Arms Control and International Security Affairs.	Special Assistant	DS140060	2/10/2014
	Office of the Deputy Secretary for Management and Resources.	Senior Advisor	DS140061	2/11/2014
	Bureau of International Narcotics and Law Enforcement Affairs.	Special Assistant	DS140054	2/14/2014
	Office of the Under Secretary for Economic Growth, Energy, and the Environment.	Special Assistant	DS140010	2/20/2014
	Office of the Chief of Protocol	Protocol Officer	DS140058	2/20/2014
	Bureau of Public Affairs	Supervisory Public Affairs Specialist.	DS140062	2/20/2014
DEPARTMENT OF THE TREASURY.	Bureau of Energy Resources	Special Assistant	DS140063	2/20/2014
	Office of International Information Programs.	Senior Advisor	DS140056	2/25/2014
	Bureau of Public Affairs	Staff Assistant	DS140064	2/28/2014
	Under Secretary for International Affairs.	Special Assistant	DY140045	2/20/2014
DEPARTMENT OF VETERANS AFFAIRS.	Secretary of the Treasury	Counselor to the Secretary	DY140035	2/4/2014
	Office of the General Counsel	Special Assistant	DV140019	2/21/2014

The following Schedule C appointing authorities were revoked during February 2014.

Agency name	Organization name	Position title	Authorization No.	Vacate date
DEPARTMENT OF COMMERCE ...	Office of the Under Secretary	Confidential Assistant and Scheduler to the Under Secretary.	DC110136	2/9/2014
DEPARTMENT OF ENERGY	Office of Management	Special Assistant	DE120115	2/8/2014
	National Nuclear Security Administration.	Senior Advisor	DE110115	2/9/2014
	Assistant Secretary for Energy Efficiency and Renewable Energy.	Chief of Staff	DE130037	2/3/2014
DEPARTMENT OF JUSTICE	Office of the Secretary	Special Advisor	DE120113	2/9/2014
	Office of the Secretary	Deputy Director for Outreach and Public Engagement.	DE120078	2/10/2014
DEPARTMENT OF HOMELAND SECURITY.	Office of the Under Secretary for National Protection and Programs Directorate.	Confidential Assistant	DM130107	2/8/2014
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Housing	Senior Policy Advisor	DU120015	2/22/2014
DEPARTMENT OF THE INTERIOR	Civil Rights Division	Senior Counselor	DJ130013	2/8/2014
	Assistant Secretary—Land and Minerals Management.	Special Assistant	DI120060	2/22/2014
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Associate Administrator for External Affairs and Environmental Education.	Press Secretary	EP130011	2/1/2014
OFFICE OF THE SECRETARY OF DEFENSE.	Operations Staff	Trip Coordinator	EP120010	2/8/2014
	Office of Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD130130	2/8/2014

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–08317 Filed 4–11–14; 8:45 am]

BILLING CODE 6325–39–P

**OFFICE OF PERSONNEL
MANAGEMENT****Privacy Act of 1974: New System of
Records**

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice of a new system of records.

SUMMARY: The Office of Personnel Management is proposing to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet 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)). The Integrity Assurance Officer Control Files (Internal 20) system of records has been operational since February 2005 without incident. Previously, OPM has relied on preexisting Privacy Act system of records notices for the collection and maintenance of these records. In an effort to increase transparency, OPM is publishing a separate notice for this system.

DATES: This addition will be effective without further notice on May 27, 2014, unless we receive comments that result in a contrary determination.

ADDRESSES: Send written comments to the Program Manager for the Freedom of Information and Privacy Act Office, Federal Investigative Services, U.S. Office of Personnel Management, 1137 Branchton Road, PO Box 618, Boyers, Pennsylvania 16018.

FOR FURTHER INFORMATION CONTACT: Program Manager, Freedom of Information and Privacy Act Office, FISSORNComments@opm.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Office of Personnel Management Federal Investigative Services (OPM-FIS) proposes to establish a new system of records titled Integrity Assurance Officer Control Files (Internal 20). This system of records allows OPM-FIS to collect, analyze, coordinate, and report investigations into allegations of misconduct or negligence by OPM Federal and contractor staff. The information in this system documents investigations into allegations or concerns of the following possible misconduct: (1) Fraud against the Government; (2) Theft of Government property; (3) Misuse of Government property and IT systems; and (4) Improper personal conduct. This

information is reported to other OPM components or Federal agencies for criminal, administrative, or any other actions deemed appropriate. Additionally, the OPM is issuing a Notice of Proposed Rulemaking concurrent with this system of records notice elsewhere in the **Federal Register** in order to claim exemptions from certain requirements of the Privacy Act.

U.S. Office of Personnel Management.
Katherine Archuleta,
Director.

[FR Doc. 2014-08316 Filed 4-11-14; 8:45 am]

BILLING CODE 6325-53-P

POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2014-23 and CP2014-38;
Order No. 2041]**

New Postal Product

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing requesting the addition of Priority Mail Contract 80 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 15, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Introduction
- II. Notice of Commission Action
- III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 80 to the competitive product list.¹

The Postal Service contemporaneously filed a redacted

¹ Request of the United States Postal Service to Add Priority Mail Contract 80 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, April 4, 2014 (Request).

contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the Governors' Decision authorizing the product (Attachment A), proposed changes to the Mail Classification Schedule (Attachment C), a Statement of Supporting Justification (Attachment D), a certification of compliance with 39 U.S.C. 3633(a) (Attachment E), and an application for non-public treatment of certain materials (Attachment F). It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2014-23 and CP2014-38 to consider the Request pertaining to the proposed Priority Mail Contract 80 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than April 15, 2014. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Kenneth Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs*It is ordered:*

1. The Commission establishes Docket Nos. MC2014-23 and CP2014-38 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than April 15, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014-08225 Filed 4-11-14; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket No. CP2014-24; Order No. 2043]

Amendment to Postal Contract

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing an amendment to Priority Mail Contract 74. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 15, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Notice of Filings
- III. Ordering Paragraphs

I. Introduction

On April 4, 2014, the Postal Service filed notice that it has agreed to an amendment to the existing Priority Mail Contract 74 negotiated service agreement approved in this docket (Amendment).¹ In support of its Notice, the Postal Service includes a redacted copy of the Amendment and a certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5.

The Postal Service also filed the unredacted Amendment and supporting financial information under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. *Id.* at 1.

The Amendment expands the application of contract to include prices for Priority Mail packages having weights different than those described in the original contract.²

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 1; Attachment A at 1. The Postal Service asserts that the

¹ Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 74, April 4, 2014 (Notice).

² Compare *id.*, Attachment A at 1-2 (filed under seal) with Docket Nos. MC2014-15 and CP2014-24, Request of the United States Postal Service to Add Priority Mail Contract 74 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 27, 2013, Attachment B at 1-3 (filed under seal).

Amendment will not impair the ability of the contract to comply with 39 U.S.C. 3633. Notice at 1.

II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than April 15, 2014. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Katalin K. Clendenin to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2014-24 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Katalin K. Clendenin to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than April 15, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,
Secretary.

[FR Doc. 2014-08227 Filed 4-11-14; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013-70; Order No. 2042]

Amendment to Postal Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing an amendment to Priority Mail Contract 60. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 15, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Notice of Filings
- III. Ordering Paragraphs

I. Introduction

On April 4, 2014, the Postal Service filed notice that it has agreed to an amendment to the existing Priority Mail Contract 60 negotiated service agreement approved in this docket (Amendment).¹ In support of its Notice, the Postal Service includes a redacted copy of the Amendment and a certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5.

The Postal Service also filed the unredacted Amendment and supporting financial information under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. *Id.* at 1.

The Amendment alters the way prices are calculated and adjusted over the length of the contract.² The Amendment also contains other minor modifications to the original agreement such as providing Priority Flat Rate packaging and Regional Rate Boxes to the customer. *Id.*

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 1; Attachment A at 1. The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. 3633. Notice at 1.

II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than April 15, 2014. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

¹ Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 60, April 4, 2014 (Notice).

² Compare *id.*, Attachment A at 1-2 (filed under seal) with Docket Nos. MC2013-54 and CP2013-70, Request of the United States Postal Service to Add Priority Mail Contract 60 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, June 25, 2013, Attachment B at 1-3 (filed under seal).

The Commission appoints John P. Klingenberg to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2013-70 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints John P. Klingenberg to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than April 15, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014-08226 Filed 4-11-14; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31011; File No. 812-14225]

ALPS ETF Trust, et al.; Notice of Application

April 8, 2014

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY: *Summary of Application:*

Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit

securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to perform creations and redemptions of Creation Units in-kind in a master-feeder structure.

Applicants: ALPS ETF Trust ("Trust"), ALPS Advisors, Inc. ("Current Adviser"), and ALPS Distributors, Inc. and ALPS Portfolio Solutions Distributor, Inc. (collectively, the "Distributor").

DATES: Filing Dates: The application was filed on October 21, 2013, and amended on March 21, 2014.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 5, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: 1290 Broadway, Suite 1100, Denver, CO 80203.

FOR FURTHER INFORMATION CONTACT: Jason M. Williams, Senior Counsel at (202) 551-6817, or Daniele Marchesani, Branch Chief, at (202) 551-6817 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. The Trust is a statutory trust organized under the laws of Delaware. The Trust is registered under the Act as an open-end management investment company with multiple series.

2. The Current Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act") and is the investment adviser to the Current Funds (defined below). Any other Adviser (defined below) will also be registered as an investment adviser under the Advisers Act. The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (each, a "Sub-Adviser"). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Distributor is the distributor for the Current Funds. The Distributor is a broker-dealer ("Broker") registered under the Securities Exchange Act of 1934 (the "Exchange Act") and acts as distributor and principal underwriter of the Current Funds. The Distributor is not affiliated with any Exchange (defined below).

4. Applicants request that the order apply to the current series' of the Trust described in the application ("Current Funds"), as well as any additional series of the Trust and other open-end management investment companies, or series thereof, that may be created in the future ("Future Funds"), each of which will operate as an exchanged-traded fund ("ETF") and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an "Underlying Index"). Any Future Fund will (a) be advised by the Current Adviser or an entity controlling, controlled by, or under common control with the Current Adviser (each, an "Adviser") and (b) comply with the terms and conditions of the application. The Current Funds and Future Funds, together, are the "Funds."¹

5. Applicants state that a Fund may operate as a feeder fund in a master-feeder structure ("Feeder Fund"). Applicants request that the order permit a Feeder Fund to acquire shares of another registered investment company in the same group of investment companies having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the limitations in section 12(d)(1)(A) of

¹ All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company. The application seeks an order to supersede a prior order issued to the Applicants. All of the applicants of the prior order have been named as Applicants, and Applicants will not continue to rely on the prior order if the requested order is issued.

the Act and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B) of the Act (“Master-Feeder Relief”).

Applicants may structure certain Feeder Funds to generate economies of scale and incur lower overhead costs.² There would be no ability by Fund shareholders to exchange Shares of Feeder Funds for shares of another feeder series of the Master Fund.

6. Each Fund, or its respective Master Fund, holds or will hold certain securities, currencies, other assets and other investment positions (“Portfolio Holdings”) selected to correspond generally to the performance of its Underlying Index. Certain of the Funds are or will be based on Underlying Indexes that will be comprised solely of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) Domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds are or will be based on Underlying Indexes that will be comprised solely of foreign and domestic, or solely foreign, equity and/or fixed income securities (“Foreign Funds”).

7. Applicants represent that each Fund, or its respective Master Fund, will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index (“Component Securities”), or in the case of Fixed Income Funds,³ in the Component Securities of its respective Underlying Index and TBA Transactions⁴ representing Component Securities, and in the case of Foreign Funds, Component Securities and Depositary Receipts⁵ representing

² Operating in a master-feeder structure could also impose costs on a Feeder Fund and reduce its tax efficiency. The Feeder Fund’s Board will consider any such potential disadvantages against the benefits of economies of scale and other benefits of operating within a master-feeder structure. In a master-feeder structure, the Master Fund—rather than the Feeder Fund—would generally invest its portfolio in compliance with the requested order.

³ A Fixed Income Fund is a Fund tracks a specified index comprised of domestic or foreign fixed income securities.

⁴ A “to-be-announced transaction” or “TBA Transaction” is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

⁵ Depositary receipts representing foreign securities (“Depositary Receipts”) include American Depositary Receipts and Global Depositary Receipts. The Funds, or their respective Master Funds, may invest in Depositary Receipts representing foreign securities in which they seek

Component Securities. Each Fund, or its respective Master Fund, may also invest up to 20% of its assets in certain index futures, options, options on index futures, swap contracts or other derivatives, as related to its respective Underlying Index and its Component Securities, cash and cash equivalents, other investment companies, as well as in securities and other instruments not included in its Underlying Index but which the Adviser believes will help the Fund track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

8. The Trust may issue Funds that seek to track Underlying Indexes constructed using 130/30 investment strategies (“130/30 Funds”) or other long/short investment strategies (“Long/Short Funds”). Each Long/Short Fund will establish (i) exposures equal to approximately 100% of the long positions specified by the Long/Short Index⁶ and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) Establish long positions in securities so that total long exposure represents approximately 130% of a Fund’s net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund’s net assets. Each Business Day, for each Long/Short Fund and 130/30 Fund, the Adviser will provide full portfolio transparency on the Fund’s publicly available Web site (“Web site”) by making available the Fund’s, or its respective Master Fund’s, Portfolio Holdings before the commencement of trading of Shares on the Listing Exchange (defined below).⁷ The information provided on the Web site will be formatted to be reader-friendly.

9. A Fund will utilize either a replication or representative sampling

to invest. Depositary Receipts are typically issued by a financial institution (a “depository bank”) and evidence ownership interests in a security or a pool of securities that have been deposited with the depository bank. A Fund, or its respective Master Fund, will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depository bank for any Depositary Receipts held by a Fund, or its respective Master Fund.

⁶ Underlying Indexes that include both long and short positions in securities are referred to as “Long/Short Indexes.”

⁷ Under accounting procedures followed by each Fund, trades made on the prior Business Day (“T”) will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

strategy to track its Underlying Index. A Fund using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund, or its respective Master Fund, will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

10. The Funds will be entitled to use their Underlying Indexes pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains an Underlying Index (each, an “Index Provider”) or a sub-licensing arrangement with the Adviser, which will have a licensing agreement with such Index Provider.⁸ A “Self-Indexing Fund” is a Fund for which an affiliated person, as defined in section 2(a)(3) of the Act (an “Affiliated Person”), or a Second-Tier Affiliate,⁹ of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an “Affiliated Index Provider”) will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an “Affiliated Index”).¹⁰

⁸ The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (or in case of a sub-licensing agreement, the Adviser) must provide the use of the Underlying Indexes and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

⁹ A Second-Tier Affiliate is an affiliated person of an Affiliated Person.

¹⁰ The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be “investment companies” in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser (“Affiliated Accounts”) as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser (“Unaffiliated Accounts”). The Affiliated Accounts and the Unaffiliated Accounts, like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated

Except with respect to the Self-Indexing Funds, no Index Provider is or will be an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor.

11. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated.

12. Applicants propose that each day that a Fund, the NYSE and the national securities exchange (as defined in section 2(a)(26) of the Act) (an "Exchange") on which the Fund's Shares are primarily listed ("Listing Exchange") are open for business, including any day that a Fund is required to be open under section 22(e) of the Act (a "Business Day"), each Self-Indexing Fund will post on its Web site, before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the Portfolio Holdings that will form the basis for the Fund's calculation of its NAV at the end of the Business Day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will provide an effective mechanism for addressing any such potential conflicts of interest.

13. Applicants represent that each Self-Indexing Fund's Portfolio Holdings will be as transparent as the portfolio holdings of existing actively managed ETFs. Unlike passively-managed ETFs, actively-managed ETFs do not seek to replicate the performance of a specified index but rather seek to achieve their investment objectives by using an "active" management strategy. Applicants contend that the structure of actively managed ETFs presents potential conflicts of interest that are the same as those presented by Self-Indexing Funds because the portfolio managers of an actively managed ETF by definition have advance knowledge of pending portfolio changes. Applicants believe that actively managed ETFs address these potential conflicts of interest appropriately through full portfolio transparency, as

the conditions to their relevant exemptive relief require.

14. In addition, Applicants do not believe the potential for conflicts of interest raised by the Adviser's use of the Underlying Indexes in connection with the management of the Self-Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.

15. Each Adviser and any Sub-Adviser has adopted or will adopt, pursuant to Rule 206(4)-7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, the Current Adviser has adopted policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by the Adviser or an associated person ("Inside Information Policy"). Any other Adviser and/or Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics¹¹ and Inside Information Policy of each Adviser and Sub-Advisers, personnel of those entities with knowledge about the composition of the Portfolio Deposit¹² will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not

provide any information relating to changes to an Underlying Index's methodology for the inclusion of component securities, the inclusion or exclusion of specific component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by the Index Provider. The Adviser will also include under Item 10.C. of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

16. To the extent the Self-Indexing Funds transact with an Affiliated Person of the Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees ("Board") will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, the Adviser, Affiliated Persons of the Adviser ("Adviser Affiliates") and Affiliated Persons of any Sub-Adviser ("Sub-Adviser Affiliates") may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by the Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission.

17. The Shares of each Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments ("Redemption Instruments").¹³ On any given Business

¹¹ The Adviser has also adopted (and any other Adviser has adopted or will adopt) a code of ethics pursuant to Rule 17j-1 under the Act and Rule 204A-1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in Rule 17j-1) from engaging in any conduct prohibited in Rule 17j-1 ("Code of Ethics").

¹² The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing is referred to as the "Portfolio Deposit."

¹³ The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 ("Securities Act"). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions)¹⁴ except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;¹⁵ (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind¹⁶ will be excluded from the Deposit Instruments and the Redemption Instruments;¹⁷ (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;¹⁸ or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a "Rebalancing"). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the "Cash Amount").

18. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all

purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;¹⁹ (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.²⁰

19. Creation Units will consist of specified large aggregations of Shares, e.g., at least 25,000 Shares, and it is expected that the initial price of a Creation Unit will range from \$1 million to \$10 million. All orders to purchase Creation Units must be placed with the Distributor by or through an "Authorized Participant" which is either (1) a "Participating Party," i.e., a broker-dealer or other participant in the

Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company ("DTC") ("DTC Participant"), which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

20. Each Business Day, before the open of trading on the Listing Exchange, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

21. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund will impose purchase or redemption transaction fees ("Transaction Fees") in connection with effecting such purchases or redemptions of Creation Units. With respect to Feeder Funds, the Transaction Fee would be paid indirectly to the Master Fund.²¹ In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable

²¹ Applicants are not requesting relief from section 18 of the Act. Accordingly, a Master Fund may require a Transaction Fee payment to cover expenses related to purchases or redemptions of the Master Fund's shares by a Feeder Fund only if it requires the same payment for equivalent purchases or redemptions by any other feeder fund. Thus, for example, a Master Fund may require payment of a Transaction Fee by a Feeder Fund for transactions for 20,000 or more shares so long as it requires payment of the same Transaction Fee by all feeder funds for transactions involving 20,000 or more shares.

¹⁴ The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

¹⁵ A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

¹⁶ This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

¹⁷ Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

¹⁸ A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

¹⁹ In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

²⁰ A "custom order" is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.²² The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

22. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a "Market Maker") and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

23. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.²³ The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

24. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized

Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

25. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a "mutual fund." Instead, each such Fund will be marketed as an "ETF." All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under section 12(d)(1)(f) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only.²⁴ Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

Section 22(d) of the Act and Rule 22c-1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal

²² Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

²³ Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

²⁴ The Master Funds will not require relief from sections 2(a)(32) and 5(a)(1) because the Master Funds will issue individually redeemable securities.

underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for the underlying foreign securities held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fourteen (14) calendar days. Accordingly, with respect to Foreign Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fourteen (14) calendar days following the tender of Creation Units for redemption.²⁵

²⁵ Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fourteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fourteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.²⁶

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts ("UITs") that are not advised or sponsored by the Adviser and are not part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act as the Funds (such management investment companies are referred to as "Investing Management Companies," such UITs are referred to as "Investing Trusts," and Investing Management Companies and Investing Trusts are collectively referred to as "Funds of Funds"), to acquire Shares beyond the limits of

under rule 15c6-1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

²⁶ In addition, the requested exemption from section 22(e) would only apply to in-kind redemptions by the Feeder Funds and would not apply to in-kind redemptions by other feeder funds.

section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any Broker registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the "Fund of Funds Adviser") and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a "Fund of Funds Sub-Adviser"). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor ("Sponsor").

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Fund.²⁷ To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor ("Fund of Funds Advisory Group") from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment

²⁷ A "Fund of Funds Affiliate" is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A "Fund Affiliate" is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser ("Fund of Funds Sub-Advisory Group").

15. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting"). An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("disinterested directors or trustees"), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund, or its respective Master Fund, in which the Investing Management Company may invest. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund, or its respective Master Fund, under rule 12b-1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of

Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.²⁸

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund, nor its respective Master Fund, will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund, or its respective Master Fund, to purchase shares of other investment companies for short-term cash management purposes or pursuant to the Master-Feeder Relief. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Fund ("FOF Participation Agreement"). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

19. Applicants also are seeking the Master-Feeder Relief to permit the Feeder Funds to perform creations and redemptions of Shares in-kind in a master-feeder structure. Applicants assert that this structure is substantially identical to traditional master-feeder structures permitted pursuant to the exception provided in section 12(d)(1)(E) of the Act. Section 12(d)(1)(E) provides that the percentage limitations of section 12(d)(1)(A) and (B) shall not apply to a security issued by an investment company (in this case, the shares of the applicable Master Fund) if, among other things, that security is the only investment security

held by the investing investment company (in this case, the Feeder Fund). Applicants believe the proposed master-feeder structure complies with section 12(d)(1)(E) because each Feeder Fund will hold only investment securities issued by its corresponding Master Fund; however, the Feeder Funds may receive securities other than securities of its corresponding Master Fund if a Feeder Fund accepts an in-kind creation. To the extent that a Feeder Fund may be deemed to be holding both shares of the Master Fund and other securities, applicants request relief from section 12(d)(1)(A) and (B). The Feeder Funds would operate in compliance with all other provisions of section 12(d)(1)(E).

Sections 17(a)(1) and (2) of the Act

20. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an "Affiliated Fund"). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

²⁸ Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

21. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Funds, or Second-Tier Affiliates of the Funds, solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions “in-kind.”

22. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making “in-kind” purchases or “in-kind” redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for “in-kind” purchases of Creation Units and the redemption procedures for “in-kind” redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Holdings currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that “in-kind” purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Fund’s objectives and with the general purposes of the Act. Applicants believe that “in-kind” purchases and redemptions will be made on terms reasonable to Applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Holdings held by a Fund is identical to that used for calculating “in-kind” purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of Applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, Applicants submit that, by using the same standards for valuing Portfolio Holdings held by a Fund as are used for calculating “in-kind” redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that

the ability to take deposits and make redemptions “in-kind” will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund’s objectives.

23. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.²⁹ Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.³⁰ Applicants believe that any proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds’ registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

24. To the extent that a Fund operates in a master-feeder structure, applicants also request relief permitting the Feeder Funds to engage in in-kind creations and redemptions with the applicable Master Fund. Applicants state that the

²⁹ Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund, a Fund of Funds might seek to transact in Creation Units directly with a Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from Section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. Applicants are not seeking relief from Section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

³⁰ Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds, may be prohibited by Section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

customary section 17(a)(1) and 17(a)(2) relief would not be sufficient to permit such transactions because the Feeder Funds and the applicable Master Fund could also be affiliated by virtue of having the same investment adviser. However, applicants believe that in-kind creations and redemptions between a Feeder Fund and a Master Fund advised by the same investment adviser do not involve “overreaching” by an affiliated person. Such transactions will occur only at the Feeder Fund’s proportionate share of the Master Fund’s net assets, and the distributed securities will be valued in the same manner as they are valued for the purposes of calculating the applicable Master Fund’s NAV. Further, all such transactions will be effected with respect to pre-determined securities and on the same terms with respect to all investors. Finally, such transaction would only occur as a result of, and to effectuate, a creation or redemption transaction between the Feeder Fund and a third-party investor. Applicants believe that the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transactions are consistent with the policy of each Fund and will be consistent with the investment objectives and policies of each Fund of Funds, and the proposed transactions are consistent with the general purposes of the Act.

Applicants’ Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. *ETF Relief*

1. The requested relief will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, Shares of such Fund will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will

contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing Fund, Long/Short Fund and 130/30 Fund will post on the Web site on each Business Day, before commencement of trading of Shares on the Exchange, the Fund's, or its respective Master Fund's, Portfolio Holdings.

6. No Adviser or any Sub-Adviser, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for a Fund, or its respective Master Fund, through a transaction in which the Fund, or its respective Master Fund, could not engage directly.

B. Section 12(d)(1) Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund, or its respective Master Fund, within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund, or its respective Master Fund, within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund, or its respective Master Fund, for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund, or its respective Master Fund, or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company,

including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund, or its respective Master Fund, or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, or its respective Master Fund, including a majority of the directors or trustees who are not "interested persons" within the meaning of Section 2(a)(19) of the Act ("non-interested Board members"), will determine that any consideration paid by the Fund, or its respective Master Fund, to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund, or its respective Master Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund, or its respective Master Fund, and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund, or its respective Master Fund, under rule 12b-1 under the Act) received from a Fund, or its respective Master Fund, by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, or its respective Master Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or

indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund, or its respective Master Fund, by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund, or its respective Master Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund, or its respective Master Fund, to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, or its respective Master Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund, or its respective Master Fund, in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund, or its respective Master Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund, or its respective Master Fund, in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated

Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund, or its respective Master Fund, will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the Trust will execute a FOF Participation Agreement stating without limitation that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund, or its respective Master Fund, in which the Investing Management Company may invest. These findings

and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund, or its respective Master Fund, will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent (i) the Fund, or its respective Master Fund, acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund, or its respective Master Fund, to acquire securities of one or more investment companies for short-term cash management purposes or (ii) the Fund acquires securities of the Master Fund pursuant to the Master-Feeder Relief.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014-08287 Filed 4-11-14; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31010; 812-14243]

Professionally Managed Portfolios and Balter Liquid Alternatives, LLC; Notice of Application

April 8, 2014.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements.

SUMMARY: Summary of Application: Applicants request an order that would permit them to enter into and materially amend sub-advisory agreements without shareholder approval and that would grant relief from certain disclosure requirements.

Applicants: Professionally Managed Portfolios (the "Trust") and Balter Liquid Alternatives, LLC (the "Adviser") (collectively, "Applicants").

DATES: *Filing Dates:* The application was filed November 22, 2013, and amended on February 18, 2014 and March 14, 2014.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 2, 2014, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants: The Trust: Elaine Richards, Esq., President and Secretary, Professionally Managed Portfolios, 2020 East Financial Way, Suite 100, Glendora, CA 91741; The Adviser: Victor W. Chiang, Balter Liquid Alternatives, LLC, 125 High Street, Oliver Street Tower Suite 802, Boston, MA 02110

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel, at (202) 551-6773, or Daniele Marchesani, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Prior to May 1991, the Trust was known as the Avondale Investment Trust. The Trust is organized as a series trust and currently consists of 46 series, one of which will be advised by the Adviser.¹ The Adviser

¹ Applicants request relief with respect to any existing and any future series of the Trust or any other registered open-end management company that: (a) is advised by the Adviser or its successor or by a person controlling, controlled by, or under common control with the Adviser or its successor (each, also an "Adviser"); (b) uses the manager of managers structure described in the application; and (c) complies with the terms and conditions of the requested order (any such series, a "Fund" and collectively, the "Funds"). The only existing

is a limited liability company organized under Delaware law. The Adviser is, and any future Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (“Advisers Act”). The Adviser will serve as the investment adviser to the Funds pursuant to an investment advisory agreement with the Trust (the “Advisory Agreement”).² Each Advisory Agreement was approved or will be approved by the Fund’s board of trustees (the “Board”), including a majority of the trustees who are not “interested persons,” as defined in section 2(a)(19) of the Act, of the Trust, the Fund, or the Adviser (“Independent Trustees”), and by the Fund’s shareholder(s) in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 under the Act. The terms of each Advisory Agreement will comply with section 15(a) of the Act.

2. Under the terms of each Advisory Agreement, the Adviser will provide the Funds with overall investment management services and will continuously review, supervise and administer each Fund’s investment program, subject to the supervision of, and policies established by the Board. For the investment management services it will provide to each Fund the Adviser will receive the fee specified in the Advisory Agreement from such Fund, based on the average daily net assets of the Fund. The Advisory Agreement permits the Adviser, subject to the approval of the Board, to delegate certain responsibilities to one or more sub-advisers (“Sub-Advisers”) to provide investment advisory services to the Funds. As of the date of the amended application, the Adviser has entered into sub-advisory agreements (“Sub-Advisory Agreements”) with two Sub-Advisers to provide investment advisory services to the Balter Long/Short Equity Fund.³ Each Sub-Adviser

registered open-end management investment company that currently intends to rely on the requested order is named as an Applicant, and the only series that currently intends to rely on the requested order as a Fund is the Balter Long/Short Equity Fund. For purposes of the requested order, “successor” is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. If the name of any Fund contains the name of a Sub-Adviser (as defined below), that name will be preceded by the name of the Adviser.

² “Advisory Agreement” includes advisory agreements with an Adviser for the Balter Long/Short Equity Fund and any future Funds.

³ As of the date of the amended application, as approved by the Fund’s sole initial shareholder, the Adviser has entered into Sub-Advisory Agreements with Apis Capital Advisors LLC (“Apis”) and Midwood Capital Management LLC (“Midwood”). On February 17–18, 2014, the Adviser recommended to the Board, and the Board approved, the engagement of two additional Sub-

is, and any future Sub-Adviser will be, an investment adviser as defined in section 2(a)(20) of the Act and registered with the Commission as an “investment adviser” under the Advisers Act. The Adviser evaluates, allocates assets to and oversees the Sub-Advisers, and makes recommendations about their hiring, termination and replacement to the Board, at all times subject to the authority of the Board. The Adviser will compensate the Sub-Advisers out of the advisory fee paid by the Funds to the Adviser under the Advisory Agreement.

3. Applicants request an order to permit the Adviser, subject to Board approval, to select certain Sub-Advisers to manage all or a portion of the assets of a Fund or Funds pursuant to a Sub-Advisory Agreement and materially amend existing Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust, a Fund, or the Adviser, other than by reason of serving as a sub-adviser to one or more of the Funds (“Affiliated Sub-Adviser”).

4. Applicants also request an order exempting the Funds from certain disclosure provisions described below that may require the Applicants to disclose fees paid by the Adviser or a Fund to each Sub-Adviser. Applicants seek an order to permit a Fund to disclose (as both a dollar amount and a percentage of the Fund’s net assets): (a) The aggregate fees paid to the Adviser and any Affiliated Sub-Adviser; and (b) the aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers (collectively, “Aggregate Fee Disclosure”). Any Fund that employs an Affiliated Sub-Adviser will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

Applicants’ Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a vote of a

Advisers for the Balter Long/Short Equity Fund, Madison Street Partners, LLC (“Madison”) and Millrace Asset Group, Inc. (“Millrace”). Both Madison and Millrace are registered investment advisers under the Advisers Act. The engagement of Madison and Millrace are dependent on the occurrence of either of the following conditions: (i) The granting of the relief requested in the application and satisfaction of the Conditions for Relief set forth in such application, or (ii) approval by shareholders of the Balter Long/Short Equity Fund to the engagement of Madison and Millrace in accordance with the requirements of the 1940 Act at a Special Meeting of shareholders called for such purpose.

majority of the company’s outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser’s compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (“1934 Act”). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the “rate of compensation of the investment adviser,” the “aggregate amount of the investment adviser’s fees,” a description of the “terms of the contract to be acted upon,” and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company’s registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statement information about investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Adviser, subject to the review and approval of the Board, to select the Sub-Advisers who are best suited to achieve each Fund’s investment objectives. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Advisers is substantially equivalent to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants

state that requiring shareholder approval of each Sub-Advisory Agreement would impose unnecessary delays and expenses on the Funds and may preclude the Funds from acting promptly when the Adviser and Board consider it appropriate to hire Sub-Advisers or amend Sub-Advisory Agreements. Applicants note that the Advisory Agreements and any Sub-Advisory Agreements with Affiliated Sub-Advisers will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f-2 under the Act.

7. If a new Sub-Adviser is retained in reliance on the requested order, the applicable Fund will inform its shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures (“Modified Notice and Access Procedures”): (a) Within 90 days after a new Sub-Adviser is hired for a Fund, the Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;⁴ and (b) the Fund will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. Applicants assert that a proxy solicitation to approve the appointment of new Sub-Advisers would provide no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Moreover, as indicated above, the applicable Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Sub-Advisory Agreements.

8. Applicants assert that the requested disclosure relief will benefit

⁴ A “Multi-manager Notice” will be modeled on a Notice of Internet Availability as defined in rule 14a-16 under the 1934 Act, and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Adviser; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Fund.

A “Multi-manager Information Statement” will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act for an information statement, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

shareholders of the Funds because it will improve the Adviser’s ability to negotiate the fees paid to Sub-Advisers. Applicants state that the Adviser may be able to negotiate rates that are below a Sub-Adviser’s “posted” amounts if the Adviser is not required to disclose the Sub-Advisers’ fees to the public.

Applicants’ Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund’s outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund’s shares to the public.

2. The prospectus for each Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as employing the manager of managers structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. Funds will inform shareholders of the hiring of a new Sub-Adviser (other than an Affiliated Sub-Adviser) within 90 days after the hiring of that new Sub-Adviser pursuant to the Modified Notice and Access Procedures.

4. The Adviser will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination and selection of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a Sub-Adviser change is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-

Adviser derives an inappropriate advantage.

7. Independent legal counsel, as defined in rule 0-1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then existing Independent Trustees.

8. Each Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

9. Whenever a Sub-Adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

10. The Adviser will provide general management services to a Fund, including overall supervisory responsibility for the general management and investment of the Fund’s assets and, subject to review and approval of the Board, will (i) set a Fund’s overall investment strategies; (ii) evaluate, select and recommend Sub-Advisers to manage all or part of a Fund’s assets; (iii) when appropriate, allocate and reallocate a Fund’s assets among multiple Sub-Advisers; (iv) monitor and evaluate the performance of Sub-Advisers; and (v) implement procedures reasonably designed to ensure that the Sub-Advisers comply with a Fund’s investment objective, policies and restrictions.

11. No trustee or officer of the Trust, or of a Fund, or director or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Adviser, except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

12. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. Any new Sub-Advisory Agreement or any amendment to an existing Advisory Agreement or Sub-Advisory Agreement that directly or indirectly results in an increase in the aggregate advisory fee rate payable by the Fund will be submitted to the Fund’s shareholders for approval.

14. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2014-08286 Filed 4-11-14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71899; File No. SR-CBOE-2014-031]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

April 8, 2014.

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 March 28, 2014, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. First, the Exchange proposes to adopt a fee of \$50 per month per login ID for PULSe Workstation users that elect to access a COB Feed.³ The COB Feed provides data (which has already been otherwise available to PULSe Workstation users) on a data feed that specifically provides COB data. In order to improve the provision of this COB data, the Exchange has recently contracted an outside vendor to provide the COB Feed. The Exchange proposes to assess the new COB Feed Fee in order to recoup costs associated with the provision of the COB Feed. The Exchange does not propose to assess the COB Feed Fee to PULSe Workstation users on the Exchange trading floor. On-floor PULSe Workstation users must use PULSe Workstations using Exchange-provided hardware, for which such users pay a fee. Off-floor PULSe Workstation users, in contrast, are able to use PULSe Workstations using their own hardware (for which they do not pay the Exchange). Further, for off-floor PULSe Workstation users, the Exchange must expend resources in order to permission their IP addresses to access PULSe servers (which requires the Exchange to modify its firewall each time an off-floor PULSe user is permissioned), and off-floor PULSe Workstation users are not assessed a fee for this process. The Exchange also would like to encourage on-floor trading activity, as the Exchange believes that the features of a trading floor provide benefits (such as price improvement) to investors and the market as a whole.

³ "COB" stands for the Exchange's Complex Order Book. For a more detailed description of the PULSe workstation and its functionality, see, e.g., Securities Exchange Act Release Nos. 62286 (June 11, 2010), 75 FR 34799 (June 18, 2010) (SR-CBOE-2010-051), 63244 (November 4, 2010), 75 FR 69148 (November 10, 2010) (SR-CBOE-2010-100), 63721 (January 14, 2011), 76 FR 3929 (January 21, 2011) (SR-CBOE-2011-011), 65280 (September 7, 2011), 76 FR 56838 (September 14, 2011), 65491 (October 6, 2011), 76 FR 63680 (October 13, 2011) (SR-CBOE-2011-092), 69990 (July 16, 2013), 78 FR 43953 (July 22, 2013) (SR-CBOE-2013-062), and 71285 (January 10, 2014), 79 FR 2916 (January 16, 2014) (SR-CBOE-2014-130).

Due to the differences between on-floor and off-floor PULSe users and the Exchange's valid desire to encourage on-floor trading, the Exchange proposes to state that the COB Feed Fee will not be assessed to PULSe Workstation users on the Exchange trading floor.

The Exchange always strives for clarity in its rules and Fees Schedule, so that market participants may best understand how rules and fees apply. As such, the Exchange proposes to clarify its Fees Schedule. Currently, the "Exception" section of the Exchange's "Linkage Fees" table states: "CBOE will not pass through or otherwise charge customer orders (of any size) routed to other exchanges that were originally transmitted to the Exchange from the trading floor through an Exchange-sponsored terminal (e.g. a Floor Broker Workstation)." The Exchange proposes to add the phrase "or PULSe Workstation" into the parenthetical to clarify that CBOE will not pass through or otherwise charge customer orders routed to other exchanges that were originally transmitted to the Exchange from a PULSe Workstation (which, like a Floor Broker Workstation, is an Exchange-sponsored terminal on the trading floor).

The proposed changes are to take effect on April 1, 2014.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁴ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁵ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that the COB Feed Fee is reasonable because, in order to improve the provision of this COB data, the Exchange has recently contracted an outside vendor to provide the COB Feed, and the new COB Feed Fee will help serve to recoup costs associated with the provision of the COB Feed. The Exchange believes it is equitable and not unfairly discriminatory to assess the COB Feed Fee only to off-floor PULSe Workstation users because of the differences between on-floor and off-floor PULSe Workstation users, and the Exchange's desire to encourage on-floor trading. On-

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

floor PULSe Workstation users must use PULSe Workstations using Exchange-provided hardware, for which such users pay a fee. Off-floor PULSe Workstation users, in contrast, are able to use PULSe Workstations using their own hardware (for which they do not pay the Exchange). Further, for off-floor PULSe Workstation users, the Exchange must expend resources in order to permission their IP addresses to access PULSe servers (which requires the Exchange to modify its firewall each time an off-floor PULSe user is permissioned), and off-floor PULSe Workstation users are not assessed a fee for this process. The Exchange also would like to encourage on-floor trading activity, as the Exchange believes that the features of a trading floor provide benefits (such as price improvement) to investors and the market as a whole. The COB Feed Fee would be assessed equally to all off-floor PULSe Workstation users that request the COB Feed.

The Exchange believes that the clarification of the Fees Schedule will alleviate potential confusion. The alleviation of potential confusion will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the COB Feed fee will be assessed to all PULSe Workstation users who request the COB Feed (except on-floor PULSe Workstation users, for the reasons described above). CBOE does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the COB Feed Fee only provides CBOE COB data and the proposed change only applies to CBOE. The proposed change to alleviate confusion is not intended for competitive reasons and only applies to CBOE.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

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) of the Act⁶ and paragraph (f) of Rule 19b-4⁷ thereunder. 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 will institute proceedings 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-CBOE-2014-031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2014-031. 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-CBOE-2014-031 and should be submitted on or before May 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2014-08282 Filed 4-11-14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71902; File No. SR-NASDAQ-2014-033]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program Regarding Options Obvious and Catastrophic Errors in Response to the Regulation NMS Plan To Address Extraordinary Market Volatility

April 8, 2014.

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 April 7, 2014, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by 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 submitting a proposal by the NASDAQ Options Market ("NOM") to amend Chapter V, Regulation of Trading on NOM, to extend the pilot program under Section 3(d)(iv), which provides for how the

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f).

Exchange treats obvious and catastrophic options errors in response to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the "Limit Up-Limit Down Plan" or the "Plan").³ The Exchange proposes to extend the pilot period until February 20, 2015.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.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

In April 2013, the Commission approved a proposal, on a one year pilot basis, to adopt Chapter V, Section 3(d)(iv) to provide for how the Exchange will treat obvious and catastrophic options errors in response to the Plan, which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).⁴ The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands.⁵ The requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

The Exchange proposes to extend the operation of Chapter V, Section 3(d)(iv),

which provides that trades are not subject to an obvious error or catastrophic error review pursuant to Section 3 during a Limit State or Straddle State, for an additional pilot period ending February 20, 2015.⁶ The Exchange believes conducting an obvious error or catastrophic error review is impracticable given the lack of a reliable National Best Bid/Offer ("NBBO") in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.*, nullified trades or adjusted prices) may not be appropriate given market conditions. Under the pilot, limit orders that are filled during a Limit State or Straddle State have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Moreover, given that options prices during brief Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes giving market participants time to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit States or Straddle States. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying those provisions during such unusual market conditions.

The Exchange believes the benefits to market participants from the pilot program should continue on a pilot basis to coincide with the operation of the Limit Up-Limit Down Plan. The Exchange believes that continuing the pilot will protect against any unanticipated consequences and permit the industry to gain further experience operating the Plan.

The Exchange will conduct an analysis concerning the elimination of obvious and catastrophic error provisions during Limit States and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will: (1) Evaluate the options market quality during Limit States and

Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange agrees to provide to the Commission data requested to evaluate the impact of the elimination of the obvious and catastrophic error provisions, including data relevant to assessing the various analyses noted above. By September 30, 2014, the Exchange shall provide to the Commission assessments relating to the impact of the operation of the obvious error rules during Limit and Straddle States as follows:

1. Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets.

2. Assess whether the lack of obvious error rules in effect during the Straddle and Limit States are problematic. Each month the Exchange shall provide to the SEC and the public a dataset containing the data for each Straddle and Limit State in optionable stocks that had at least one trade on the Exchange during a Straddle or Limit State. For each of those options affected, each data record should contain the following information:

- Stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state,
 - For activity on the Exchange:
 - Executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer,
 - high execution price, low execution price,
 - number of trades for which a request for review for error was received during Straddle and Limit States,
 - an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle state compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise).
- Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle state.⁷

³ Securities Exchange Act Release Nos. 69142 (March 15, 2013), 78 FR 17251 (March 20, 2013); and 69341 (April 8, 2013), 78 FR 21996 (April 12, 2013) (SR-NASDAQ-2013-048).

⁴ The Plan was recently proposed to be extended until February 20, 2015. See Securities Exchange Act Release No. 71649 (March 8, 2014), 79 FR 13696 (March 11, 2014) (File No. 4-631). The Plan was initially approved for a one-year pilot, which began on April 8, 2013 and the pilot period is currently scheduled to end on April 8, 2014.

⁵ Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

⁶ The Exchange also proposes to correct paragraph (d), which provides that such provision is in effect during a pilot period to coincide with the pilot period for the Plan, except as specified in subparagraph (v) (the obvious error provision that is the subject of this proposal), to reflect that the exception applies to subparagraph (iv) rather than (v). There is no paragraph (v).

⁷ The Exchange agreed to provide similar data in the original proposal. See Securities Exchange Act Release No. 69341 (April 8, 2013), 78 FR 21996

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general and with Section 6(b)(5) of the Act,⁹ in particular, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it should continue to provide certainty about how errors involving options orders and trades will be handled during periods of extraordinary volatility in the underlying security. The Exchange believes that it continues to be necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit State or Straddle State from certain aspects of Chapter V, Section 6.¹⁰

Although the Limit Up-Limit Down Plan is operational, the Exchange believes that maintaining the pilot will help the industry gain further experience operating the Plan as well as the pilot provisions.

Based on the foregoing, the Exchange believes the benefits to market participants should continue on a pilot basis to coincide with the operation of the Limit Up-Limit Down Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposal does not impose an intra-market burden on competition, because it will apply to all members. Nor will the proposal impose a burden on competition among the options exchanges, because, in addition to the vigorous competition for order flow among the options exchanges, the proposal addresses a regulatory situation common to all options

exchanges. To the extent that market participants disagree with the particular approach taken by the Exchange herein, market participants can easily and readily direct order flow to competing venues. The Exchange believes this proposal will not impose a burden on competition and will help provide certainty during periods of extraordinary volatility in an NMS stock.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate 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 Act¹¹ and Rule 19b-4(f)(6)(iii) thereunder.¹²

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 stated that waiver of this requirement will allow the Exchange to extend the pilot program prior to its expiration on April 8, 2014. The Exchange also stated that waiver of this requirement would ensure the pilot program would align with the pilot period for the Plan and would ensure that trading in options that overlay NMS Stocks continues to be appropriately modified to reflect market conditions that occur during a Limit State or a Straddle State. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates

the proposed rule change to be operative upon filing.¹³

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-NASDAQ-2014-033 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NASDAQ-2014-033. 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

(April 12, 2013) (SR-NASDAQ-2013-048) at notes 4 and 11. However, that data included two additional filters pertaining to the top 10 options and an in-the-money amount, which will no longer apply. The Exchange intends to provide historical data in the new form pursuant to this proposed rule change, going back to the beginning of the original pilot period once such data can be reasonably compiled.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ The Exchange also believes that the proposal to correct the reference to subparagraph (iv) in paragraph (d) is consistent with promoting just and equitable principles of trade, because it corrects the rule to make it more understandable to participants.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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–NASDAQ–2014–033 and should be submitted on or before May 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–08285 Filed 4–11–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71906; File No. SR–Phlx–2014–20]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Emergency and Extraordinary Market Conditions

April 8, 2014.

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 March 27, 2014, 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 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 proposes to amend the manner in which it authorizes action in emergency and extraordinary market conditions.

The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to eliminate Rule 98, entitled “Emergency Committee,” in order to conform its process for authorizing action to make decisions in emergency and extraordinary market conditions. The Exchange proposes to utilize a By-Law to govern the process of authoring such action similar to By-Laws relied upon by The NASDAQ Stock Market LLC (“Nasdaq”) and NASDAQ OMX BX, Inc. (“BX”).³

Exchange Rule 98 provides that the Phlx Board of Directors is authorized to establish an emergency committee to determine the existence of extraordinary market conditions or other emergencies.⁴ Further, upon a determination that such an emergency condition exists, the Committee may take any action regarding the following: (1) Operation of Phlx XL II, or any other Exchange quotation, transaction reporting, execution, order routing or other systems or facility; (2) operation of, and trading on, any Exchange floor; (3) trading in any securities traded on the Exchange; and (4) the operation of members’ or member organizations’ offices or systems. Any member of the Committee may request the Committee to determine whether an emergency condition exists. If the Committee determines that such an emergency exists and takes action, the Committee shall prepare a report of this matter and submit it promptly to the Securities and Exchange Commission and submit it to

the Board of Directors at the Board’s next regular meeting.

Nasdaq and BX rely on Article IX, Section 5 of the exchanges’ respective By-Laws [sic] to authorize the Board of Directors or its designee with authority to take action under emergency or extraordinary market conditions. Phlx would similarly rely on By-Law language which was adopted in 2011⁵ at By-Law Article VII, Section 7–5. Specifically, the Phlx By-Law states, that the Board of Directors, or such person or persons or committee as may be designated by the Board, in the event of an emergency or extraordinary market conditions, shall have the authority to take any action regarding: (a) The trading in or operation of the national securities exchange operated by the Company or any other organized securities markets that may be operated by the Company, the operation of any automated system owned or operated by the Company, and the participation in any such system or any or all persons or the trading therein of any or all securities; and (b) the operation of any or all offices or systems of members, if, in the opinion of the Board or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system.

The Exchange is proposing to eliminate Phlx Rule 98, which provides for an Emergency Committee, and instead rely on the authority in existing By-Law Article VII, Section 7–5 to empower the Phlx Board of Directors or such person or persons or committee as designated by the Phlx Board of Directors to take action in the event of an emergency or extraordinary market condition. Specifically, regarding the trading in or operation of the national securities exchange operated by the Exchange or any other organized securities markets that may be operated by the Exchange, the operation of any automated system owned or operated by the Exchange, and the participation in any such system or any or all persons or the trading therein of any or all securities; and the operation of any or all offices or systems of members, if, in the opinion of the Board or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public

³ See Nasdaq By-Law Article IX, Section 5 entitled “Authority to Take Action Under Emergency or Extraordinary Market Conditions.” See also BX By-Law Article XII, Section 12.5 entitled “Authority to Take Action Under Emergency or Extraordinary Market Conditions.”

⁴ See Rule 98.

⁵ See Securities Exchange Act Release No. 63981 (February 25, 2011), 76 FR 12180 (March 4, 2011) (SR–Phlx–2011–13) (a rule proposal to, among other things, amend the Limited Liability Company Agreement and By-Laws to substantially conform to NASDAQ Stock Market’s Second Amended Limited Liability Company Agreement and By-Laws).

¹⁴ 17 CFR 200.30–3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

interest or for the orderly operation of the marketplace or the system, similar to Nasdaq and BX. The Exchange's revised procedures would continue to report emergency matters to the Commission and Phlx Board of Directors of uses of such authority to the extent that the Board of Directors has delegated such authority to certain person(s) or committee. The Exchange believes that eliminating Rule 98 and utilizing existing By-Law Article VII, Section 7-5 to take action under emergency or extraordinary market conditions would conform the processes for handling such circumstances across the various NASDAQ OMX markets. This proposal does not impact the types of events that would be deemed "emergency" or "extraordinary market" conditions. The Exchange anticipates utilizing By-Law Article VII, Section 7-5 in the same manner and for the same types of emergency and extraordinary market events as Rule 98 is utilized for today.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by conforming the authority to take action under emergency or extraordinary market conditions across the NASDAQ OMX markets.

The Exchange believes that utilizing By-Law Article VII, Section 7-5 to designate authority to either the Board of Directors or its designee to take action under emergency or extraordinary market conditions instead of utilizing Rule 98, which provides for an Emergency Committee established by the Board, will conform the Exchange's process and authority pursuant to its By-Laws in these types of events to those of Nasdaq and BX. The manner in which the Exchange handles emergency or extraordinary market conditions will not otherwise be impacted, except that the Board may retain such authority or delegate the authority to a person, persons or a committee to take action in these events. The Exchange would continue to report such uses of this authority to the Commission and the Phlx Board of Directors. The Exchange believes that eliminating Rule 98 in favor of relying on Article VII, Section

7-5 will continue to ensure that the Exchange has authority to operate in times of emergency and extraordinary conditions, which will foster investor and public interest, and promote just and equitable principles of trade. Also, this proposal continues to remove possible impediments to the Exchange's market that may arise due to emergency or extraordinary market conditions, thereby perfecting the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes this proposed rule change will continue to benefit investors by providing the Exchange the ability to authorize action in the event of an emergency or extraordinary market conditions.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁸ 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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

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.

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-2014-20 on the subject line.

Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2014-20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the 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-2014-20 and should be submitted on or before May 5, 2014.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A).

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) 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 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.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2014-08299 Filed 4-11-14; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71900; File No. SR-BX-2014-017]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program Regarding Options Obvious and Catastrophic Errors in Response to the Regulation NMS Plan To Address Extraordinary Market Volatility

April 8, 2014.

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 April 7, 2014, NASDAQ OMX BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by 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 BX Options Rules to extend the pilot program under Chapter V, Section 3(d)(iv), which provides for how the Exchange treats obvious and catastrophic options errors in response to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit Down Plan” or the “Plan”).³ The Exchange proposes to extend the pilot period until February 20, 2015.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxbx.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

In April 2013, the Commission approved a proposal, on a one year pilot basis, to adopt Chapter V, Section 3(d)(iv) to provide for how the Exchange will treat obvious and catastrophic options errors in response to the Plan, which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).⁴ The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands.⁵ The requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

The Exchange proposes to extend the operation of Chapter V, Section 3(d)(iv), which provides that trades are not subject to an obvious error or catastrophic error review pursuant to Section 3 during a Limit State or Straddle State, for an additional pilot period ending February 20, 2015.⁶ The Exchange believes conducting an obvious error or catastrophic error review is impracticable given the lack of a reliable National Best Bid/Offer (“NBBO”) in the options market during Limit States and Straddle States, and

⁴ The Plan was recently proposed to be extended until February 20, 2015. See Securities Exchange Act Release No. 71649 (March 8, 2014), 79 FR 13696 (March 11, 2014) (File No. 4-631). The Plan was initially approved for a one-year pilot, which began on April 8, 2013 and the pilot period is currently scheduled to end on April 8, 2014.

⁵ Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

⁶ The Exchange also proposes to correct paragraph (d), which provides that such provision is in effect during a pilot period to coincide with the pilot period for the Plan, except as specified in subparagraph (v) (the obvious error provision that is the subject of this proposal), to reflect that the exception applies to subparagraph (iv) rather than (v). There is no paragraph (v).

that the resulting actions (*i.e.*, nullified trades or adjusted prices) may not be appropriate given market conditions. Under the pilot, limit orders that are filled during a Limit State or Straddle State have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Moreover, given that options prices during brief Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes giving market participants time to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit States or Straddle States. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying those provisions during such unusual market conditions.

The Exchange believes the benefits to market participants from the pilot program should continue on a pilot basis to coincide with the operation of the Limit Up-Limit Down Plan. The Exchange believes that continuing the pilot will protect against any unanticipated consequences and permit the industry to gain further experience operating the Plan.

The Exchange will conduct an analysis concerning the elimination of obvious and catastrophic error provisions during Limit States and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange agrees to provide to the Commission data requested to evaluate the impact of the elimination of the obvious and catastrophic error provisions, including data relevant to assessing the various analyses noted above. By September 30, 2014, the Exchange shall provide to the Commission assessments relating to the impact of the operation of the obvious error rules during Limit and Straddle States as follows:

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release Nos. 69140 (March 15, 2013), 78 FR 17255 (March 20, 2013) and 69343 (April 8, 2013), 78 FR 21982 (April 12, 2013) (SR-BX-2013-026).

1. Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets.

2. Assess whether the lack of obvious error rules in effect during the Straddle and Limit States are problematic.

Each month the Exchange shall provide to the SEC and the public a dataset containing the data for each Straddle and Limit State in optionable stocks that had at least one trade on the Exchange during a Straddle or Limit State. For each of those options affected, each data record should contain the following information:

- Stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state,
 - For activity on the Exchange:
 - executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer,
 - high execution price, low execution price,
 - number of trades for which a request for review for error was received during Straddle and Limit States,
 - an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle state compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise).
- Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle state.⁷

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general and with Section 6(b)(5) of the Act,⁹ in particular, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and

open market and a national market system, and, in general, protect investors and the public interest, because it should continue to provide certainty about how errors involving options orders and trades will be handled during periods of extraordinary volatility in the underlying security. The Exchange believes that it continues to be necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit State or Straddle State from certain aspects of Chapter V, Section 6.¹⁰

Although the Limit Up-Limit Down Plan is operational, the Exchange believes that maintaining the pilot will help the industry gain further experience operating the Plan as well as the pilot provisions.

Based on the foregoing, the Exchange believes the benefits to market participants should continue on a pilot basis to coincide with the operation of the Limit Up-Limit Down Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposal does not impose an intra-market burden on competition, because it will apply to all members. Nor will the proposal impose a burden on competition among the options exchanges, because, in addition to the vigorous competition for order flow among the options exchanges, the proposal addresses a regulatory situation common to all options exchanges. To the extent that market participants disagree with the particular approach taken by the Exchange herein, market participants can easily and readily direct order flow to competing venues. The Exchange believes this proposal will not impose a burden on competition and will help provide certainty during periods of extraordinary volatility in an NMS stock.

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.

¹⁰ The Exchange also believes that the proposal to correct the reference to subparagraph (iv) in paragraph (d) is consistent with promoting just and equitable principles of trade, because it corrects the rule to make it more understandable to participants.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)(iii) thereunder.¹²

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 stated that waiver of this requirement will allow the Exchange to extend the pilot program prior to its expiration on April 8, 2014. The Exchange also stated that waiver of this requirement would ensure the pilot program would align with the pilot period for the Plan and would ensure that trading in options that overlay NMS Stocks continues to be appropriately modified to reflect market conditions that occur during a Limit State or a Straddle State. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.¹³

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.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ The Exchange agreed to provide similar data in the original proposal. See Securities Exchange Act Release No. 69343 (April 8, 2013), 78 FR 21982 (April 12, 2013) (SR-BX-2013-026) at notes 4 and 11. However, that data included two additional filters pertaining to the top 10 options and an in-the-money amount, which will no longer apply. The Exchange intends to provide historical data in the new form pursuant to this proposed rule change, going back to the beginning of the original pilot period once such data can be reasonably compiled.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

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-BX-2014-017 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number *SR-BX-2014-017*. 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-BX-2014-017 and should be submitted on or before May 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014-08283 Filed 4-11-14; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71897; File No. SR-NYSE-2014-16]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 13 Governing Pegging Interest

April 8, 2014.

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 March 25, 2014, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 Rule 13 (Orders and Modifiers) governing Pegging Interest. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 13 (Orders and Modifiers) to (i) remove DMM interest as eligible to be set as pegging interest; (ii) remove Market Pegging Interest; and (iii) remove the ability to add an offset value to be specified for pegging interest.

The Exchange notes that it recently amended its rules governing pegging interest to move the rule text that provided for pegging on the Exchange from Rule 70.26 (Pegging for d-Quotes and e-Quotes)³ to Rule 13 and amend such text to (i) permit DMM interest to be set as pegging interest; (ii) change references from NBB, NBO and NBBO to PBB, PBO and PBBO, respectively; (iii) permit pegging interest to peg to the opposite side of the market ("Market Pegging Interest"); and (iv) provide for an offset value to be specified for pegging interest.⁴ When it moved the pegging interest rule text to Rule 13, the Exchange also made several other changes to the rule text so that the proposed substantive changes could be incorporated in a logical and transparent manner and to streamline the rule in a non-substantive manner. The Exchange notes that the proposed rule change would revert rules governing pegging interest to the prior functionality, but would maintain the changes to move the rule text to Rule 13, to reference the PBBO instead of the NBBO, and to streamline the rule text.

In the 2012 pegging filing, the Exchange stated that it would announce the implementation date of that proposed rule change in a Trader Update no later than 90 days after publication of the notice in the **Federal Register**, and the implementation date would be no later than 90 days following publication of the Trader Update announcing publication of the notice in the **Federal Register**. Following the effective date of the 2012 pegging filing, the Exchange was undergoing a number of complex technology changes, including introducing technology to implement the Regulation NMS Plan to Address Extraordinary Market Volatility (the

³ E-Quotes are Floor broker agency interest files. D-Quotes are e-Quotes for which a Floor broker has entered discretionary instructions as to size and/or price.

⁴ See Securities Exchange Act Release No. 68302 (Nov. 27, 2012), 77 FR 71658 (Dec. 3, 2012) (SR-NYSE-2012-65) (the "2012 pegging filing").

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

“Plan”),⁵ which began implementation on April 8, 2013, and moving the Exchange’s matching engine to the Universal Trading Platform. During that time, the Exchange prioritized its technology implementation schedule to assure timely compliance with the Plan’s implementation schedule. As a result, in the Spring of 2013, the Exchange moved back the planned implementation of the pegging interest changes.

During this same period, the Exchange maintained communications with Floor brokers and Designated Market Makers (“DMM”) regarding its technology plans. After taking into consideration both the ongoing technology changes that the Exchange implemented in 2013, including implementation of both Phase I of the Plan in April 2013 and implementation of Phase II of the Plan in August and September of 2013, and feedback from Floor brokers and DMMs, the Exchange did not introduce the functionality described in the 2012 pegging filing to expand pegging interest to DMMs, introduce the Market Pegging Interest, or make available the ability to add an offset value. The Exchange did, however, implement the pegging functionality to peg to the PBBO instead of the NBBO.

The Exchange now proposes to conform its rules to the pegging functionality that is currently available. Accordingly, the Exchange proposes to amend Rule 13 governing pegging interest to (i) delete the reference to DMMs in paragraph (a)(1) of the Rule 13 text governing pegging interest; (ii) delete paragraph (b) of the Rule 13 text governing pegging interest, which discusses offset values; and (iii) delete paragraph (d) of the Rule 13 text governing pegging interest, which discusses the Market Pegging Interest. The Exchange believes it is appropriate to maintain the balance of the rule text governing pegging interest in Rule 13 for the same reasons expressed in the 2012 pegging filing. Specifically, as described in detail in the 2012 pegging filing, the remainder of the Rule 13 rule text governing pegging interest covers the same functionality as the rule text previously found in Rule 70.26, but with non-substantive changes to make the rule text more focused and streamlined.

⁵ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) (Approval Order of the Plan), as amended.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating 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 proposed rule change is also not designed to permit unfair discrimination.

The Exchange believes removing rule text that relates to functionality that the Exchange did not implement will remove impediments to, and perfect the mechanism of a free and open market and national market system and, in general, protect investors and the public interest by assuring that the Exchange’s rules are transparent regarding how the Exchange operates. In addition, the Exchange believes that maintaining the balance of the rule text in Rule 13 governing pegging interest promotes clarity and transparency by adding greater specificity with respect to the interest to which pegging interest may peg. Additionally, the removal would reduce potential confusion that may result from having unavailable functionality in the Exchange’s rulebook. In addition, the continuation of the realignment and consolidation of former Rule 70.26 rule text governing pegging interest with other orders and modifiers in Rule 13 has resulted in a clearer rule, which benefits all member organizations as well as others that read the rule.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather would delete unavailable functionality in the Exchange’s rulebook, thereby reducing confusion and making the Exchange’s rules easier to understand and navigate.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were 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 Act⁸ 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 and Rule 19b-4(f)(6)(iii) thereunder.

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)¹⁰ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2014-16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

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)(2)(B).

Commission, 100 F Street NE.,
Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2014-16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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 publicly available. All submissions should refer to File Number SR-NYSE-2014-16 and should be submitted on or before May 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014-08280 Filed 4-11-14; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71901; File No. SR-Phlx-2014-21]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program Regarding Options Obvious and Catastrophic Errors in Response to the Regulation NMS Plan To Address Extraordinary Market Volatility

April 8, 2014.

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 April 7, 2014, 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 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 proposes to extend the pilot program regarding Exchange Rule 1047(f)(v), which provides for how the Exchange treats obvious and catastrophic options errors in response to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the "Limit Up-Limit Down Plan" or the "Plan").³ The Exchange proposes to extend the pilot period until February 20, 2015.

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

In April 2013, the Commission approved a proposal, on a one year pilot basis, to adopt Exchange Rule 1047(f)(v) to provide for how the Exchange will treat obvious and catastrophic options errors in response to the Plan, which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).⁴ The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands.⁵ The requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

The Exchange proposes to extend the operation of Rule 1047(f)(v), which provides that trades are not subject to an obvious error or catastrophic error review pursuant to Rule 1092(a)(i) or (ii) during a Limit State or Straddle State, for an additional pilot period ending February 20, 2015. The Exchange believes conducting an obvious error or catastrophic error review is impracticable given the lack of a reliable National Best Bid/Offer ("NBBO") in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.*, nullified trades or adjusted prices) may not be appropriate given market conditions. Under the pilot, limit orders that are filled during a Limit State or Straddle State have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Moreover, given that options prices during brief Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes

⁴ The Plan was recently proposed to be extended until February 20, 2015. See Securities Exchange Act Release No. 71649 (March 5, 2014), 79 FR 13696 (March 11, 2014) (File No. 4-631). The Plan was initially approved for a one-year pilot, which began on April 8, 2013 and the pilot period is currently scheduled to end on April 8, 2014.

⁵ Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release Nos. 69141 (March 15, 2013), 78 FR 17262; and 69344 (April 8, 2013), 78 FR 22001 (April 12, 2013) (SR-Phlx-2013-29).

¹¹ 17 CFR 200.30-3(a)(12).

giving market participants time to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit States or Straddle States. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying those provisions during such unusual market conditions.

The Exchange believes the benefits to market participants from the pilot program should continue on a pilot basis to coincide with the operation of the Limit Up-Limit Down Plan. The Exchange believes that continuing the pilot will protect against any unanticipated consequences and permit the industry to gain further experience operating the Plan.

The Exchange will conduct an analysis concerning the elimination of obvious and catastrophic error provisions during Limit States and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange agrees to provide to the Commission data requested to evaluate the impact of the elimination of the obvious and catastrophic error provisions, including data relevant to assessing the various analyses noted above. By September 30, 2014, the Exchange shall provide to the Commission assessments relating to the impact of the operation of the obvious error rules during Limit and Straddle States as follows:

1. Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets.
2. Assess whether the lack of obvious error rules in effect during the Straddle and Limit States are problematic. Each month the Exchange shall provide to the SEC and the public a dataset containing the data for each Straddle and Limit State in optionable stocks that had at least one trade on the Exchange during a Straddle or Limit State. For each of those options affected, each data record should contain the following information:

- Stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state,
- For activity on the Exchange:
 - executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer,
 - high execution price, low execution price,
 - number of trades for which a request for review for error was received during Straddle and Limit States,
 - an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle state compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle state.⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general and with Section 6(b)(5) of the Act,⁸ in particular, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it should continue to provide certainty about how errors involving options orders and trades will be handled during periods of extraordinary volatility in the underlying security. The Exchange believes that it continues to be necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit State or Straddle State from certain aspects of Rule 1092.

Although the Limit Up-Limit Down Plan is operational, the Exchange

⁶ The Exchange agreed to provide similar data in the original proposal. See Securities Exchange Act Release No. 69344 (April 8, 2013), 78 FR 22001 (April 12, 2013) (SR-Phlx-2013-29) at notes 4 and 12. However, that data included two additional filters pertaining to the top 10 options and an in-the-money amount, which will no longer apply. The Exchange intends to provide historical data in the new form pursuant to this proposed rule change, going back to the beginning of the original pilot period once such data can be reasonably compiled.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

believes that maintaining the pilot will help the industry gain further experience operating the Plan as well as the pilot provisions.

Based on the foregoing, the Exchange believes the benefits to market participants should continue on a pilot basis to coincide with the operation of the Limit Up-Limit Down Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposal does not impose an intra-market burden on competition, because it will apply to all members. Nor will the proposal impose a burden on competition among the options exchanges, because, in addition to the vigorous competition for order flow among the options exchanges, the proposal addresses a regulatory situation common to all options exchanges. To the extent that market participants disagree with the particular approach taken by the Exchange herein, market participants can easily and readily direct order flow to competing venues. The Exchange believes this proposal will not impose a burden on competition and will help provide certainty during periods of extraordinary volatility in an NMS stock.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate 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 Act⁹ and Rule 19b-4(f)(6)(iii) thereunder.¹⁰

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule

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 stated that waiver of this requirement will allow the Exchange to extend the pilot program prior to its expiration on April 8, 2014. The Exchange also stated that waiver of this requirement would ensure the pilot program would align with the pilot period for the Plan and would ensure that trading in options that overlay NMS Stocks continues to be appropriately modified to reflect market conditions that occur during a Limit State or a Straddle State. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.¹¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-Phlx-2014-21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

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.

¹¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-Phlx-2014-21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. 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-2014-21 and should be submitted on or before May 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014-08284 Filed 4-11-14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71898; File No. SR-NYSEMKT-2014-27]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 13—Equities Governing Pegging Interest

April 8, 2014.

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 March 25, 2014, NYSE MKT LLC ("NYSE MKT" or

"Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 Rule 13—Equities (Orders and Modifiers) governing Pegging Interest. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 13—Equities (Orders and Modifiers) ("Rule 13") to (i) remove DMM interest as eligible to be set as pegging interest; (ii) remove Market Pegging Interest; and (iii) remove the ability to add an offset value to be specified for pegging interest.

The Exchange notes that it recently amended its rules governing pegging interest to move the rule text that provided for pegging on the Exchange from Rule 70.26—Equities (Pegging for d-Quotes and e-Quotes)³ to Rule 13 and amend such text to (i) permit DMM interest to be set as pegging interest; (ii) change references from NBB, NBO and NBBO to PBB, PBO and PBBO, respectively; (iii) permit pegging interest to peg to the opposite side of the market

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ E-Quotes are Floor broker agency interest files. D-Quotes are e-Quotes for which a Floor broker has entered discretionary instructions as to size and/or price.

(“Market Pegging Interest”); and (iv) provide for an offset value to be specified for pegging interest.⁴ When it moved the pegging interest rule text to Rule 13, the Exchange also made several other changes to the rule text so that the proposed substantive changes could be incorporated in a logical and transparent manner and to streamline the rule in a non-substantive manner. The Exchange notes that the proposed rule change would revert rules governing pegging interest to the prior functionality, but would maintain the changes to move the rule text to Rule 13, to reference the PBBO instead of the NBBO, and to streamline the rule text.

In the 2012 pegging filing, the Exchange stated that it would announce the implementation date of that proposed rule change in a Trader Update no later than 90 days after publication of the notice in the **Federal Register**, and the implementation date would be no later than 90 days following publication of the Trader Update announcing publication of the notice in the **Federal Register**.

Following the effective date of the 2012 pegging filing, the Exchange was undergoing a number of complex technology changes, including introducing technology to implement the Regulation NMS Plan to Address Extraordinary Market Volatility (the “Plan”),⁵ which began implementation on April 8, 2013, and moving the Exchange’s matching engine to the Universal Trading Platform. During that time, the Exchange prioritized its technology implementation schedule to assure timely compliance with the Plan’s implementation schedule. As a result, in the Spring of 2013, the Exchange moved back the planned implementation of the pegging interest changes.

During this same period, the Exchange maintained communications Floor brokers and Designated Market Makers (“DMM”) regarding its technology plans. After taking into consideration both the ongoing technology changes that the Exchange implemented in 2013, including implementation of both Phase I of the Plan in April 2013 and implementation of Phase II of the Plan in August and September of 2013, and feedback from Floor brokers and DMMs, the Exchange did not introduce the functionality described in the 2012 pegging filing to

expand pegging interest to DMMs, introduce the Market Pegging Interest, or make available the ability to add an offset value. The Exchange did, however, implement the pegging functionality to peg to the PBBO instead of the NBBO.

The Exchange now proposes to conform its rules to the pegging functionality that is currently available. Accordingly, the Exchange proposes to amend Rule 13 governing pegging interest to (i) delete the reference to DMMs in paragraph (a)(1) of the Rule 13 text governing pegging interest; (ii) delete paragraph (b) of the Rule 13 text governing pegging interest, which discusses offset values; and (iii) delete paragraph (d) of the Rule 13 text governing pegging interest, which discusses the Market Pegging Interest. The Exchange believes it is appropriate to maintain the balance of the rule text governing pegging interest in Rule 13 for the same reasons expressed in the 2012 pegging filing. Specifically, as described in detail in the 2012 pegging filing, the remainder of the Rule 13 rule text governing pegging interest covers the same functionality as the rule text previously found in Rule 70.26—Equities, but with non-substantive changes to make the rule text more focused and streamlined.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating 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 proposed rule change is also not designed to permit unfair discrimination.

The Exchange believes removing rule text that relates to functionality that the Exchange did not implement will remove impediments to, and perfect the mechanism of a free and open market and national market system and, in general, protect investors and the public interest by assuring that the Exchange’s rules are transparent regarding how the Exchange operates. In addition, the Exchange believes that maintaining the

balance of the rule text in Rule 13 governing pegging interest promotes clarity and transparency by adding greater specificity with respect to the interest to which pegging interest may peg. Additionally, the removal would reduce potential confusion that may result from having unavailable functionality in the Exchange’s rulebook. In addition, the continuation of the realignment and consolidation of former Rule 70.26—Equities rule text governing pegging interest with other orders and modifiers in Rule 13 has resulted in a clearer rule, which benefits all member organizations as well as others that read the rule.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather would delete unavailable functionality in the Exchange’s rulebook, thereby reducing confusion and making the Exchange’s rules easier to understand and navigate.

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 Act⁸ 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 and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if

⁴ See Securities Exchange Act Release No. 68305 (Nov. 28, 2012), 77 FR 71853 (Dec. 4, 2012) (SR-NYSEMKT-2012-67) (the “2012 pegging filing”).

⁵ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) (Approval Order of the Plan), as amended.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

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)¹⁰ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2014-27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2014-27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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 publicly available. All submissions should refer to File Number SR-NYSEMKT-2014-27 and should be submitted on or before May 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014-08281 Filed 4-11-14; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

In the Matter of GrowLife, Inc., File No. 500-1; Order of Suspension of Trading

April 10, 2014.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of GrowLife, Inc. ("GrowLife") because of concerns regarding the accuracy and adequacy of information in the marketplace and potentially manipulative transactions in GrowLife's common stock. GrowLife is a Delaware corporation based in Woodland Hills, California. It is quoted on OTCBB and OTC Link under the symbol PHOT.

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 company.

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 company is suspended for the period from 9:30 a.m. e.d.t. on April 10, 2014, through 11:59 p.m. e.d.t. on April 24, 2014.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014-08475 Filed 4-10-14; 4:15 pm]

BILLING CODE 8011-01-P

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of

clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS Form—402

Title: Uncompensated Registrar Appointment Form

Purpose: Is used to verify the official status of applicants for the position of Uncompensated Registrars and to establish authority for those appointed to perform as Selective Service System Registrars.

Respondents: United States citizens over the age of 18.

Frequency: One time.

Burden: The reporting burden is three minutes or less per respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209-2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of the publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209-2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: April 8, 2014.

Lawrence Romo,

Director.

[FR Doc. 2014-08311 Filed 4-11-14; 8:45 am]

BILLING CODE 8015-01-P

DEPARTMENT OF STATE

[Public Notice 8693]

30-Day Notice of Proposed Information Collection: Refugee Biographic Data

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

¹⁰ 15 U.S.C. 78s(b)(2)(B).

¹¹ 17 CFR 200.30-3(a)(12).

DATE: Submit comments directly to the Office of Management and Budget (OMB) up to May 14, 2014.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- **Email:**

oira_submission@omb.eop.gov. You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.

- **Fax:** 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Delicia Spruell, Department of State, PRM/Admissions, 2025 E Street NW., Washington, DC 20522–0908, who may be reached on (202) 453–9257 or at *Spruellda@state.gov*.

SUPPLEMENTARY INFORMATION:

- **Title of Information Collection:** Refugee Biographic Data
- **OMB Control Number:** 1405–0102
- **Type of Request:** Extension of a Currently Approved Collection
- **Originating Office:** Bureau of Population, Refugees, and Migration (PRM/A)
 - **Form Number:** N/A
 - **Respondents:** Refugee applicants for the U.S. Refugee Admissions Program
 - **Estimated Number of Respondents:** 70,000
 - **Estimated Number of Responses:** 70,000
 - **Average Time per Response:** One-half hour
 - **Total Estimated Burden Time:** 35,000 hours
 - **Frequency:** Once per respondent
 - **Obligation to Respond:** Required to obtain a benefit

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
 - Enhance the quality, utility, and clarity of the information to be collected.
 - Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The Refugee Biographic Data Sheet describes a refugee applicant's personal characteristics and is needed to match the refugee with a resettlement agency to ensure appropriate initial reception and placement in the United States under the U.S. Refugee Admissions Program administered by the Bureau of Population, Refugees, and Migration, as cited in the Immigration and Nationality Act and the Refugee Act of 1980.

Methodology: Biographic information is collected in a face-to-face intake process with the applicant overseas. An employee of a Resettlement Support Center, under cooperative agreement with PRM, collects the information and enters it into the Worldwide Refugee Admissions Processing System.

Dated: April 8, 2014.

Kelly Gauger,

Deputy Director, Office of Admissions, Bureau of Population, Refugees, and Migration, Department of State.

[FR Doc. 2014–08329 Filed 4–11–14; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF STATE

[Public Notice 8692]

Culturally Significant Objects Imported for Exhibition Determinations: “Gods and Heroes: Masterpieces From the École des Beaux-Arts, Paris” Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition “Gods and Heroes: Masterpieces from the École des Beaux-Arts, Paris,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display

of the exhibit objects at the Oklahoma City Museum of Art, Oklahoma City, OK, from on or about June 19, 2014, until on or about September 14, 2014; the Albuquerque Museum of Art and History; Albuquerque, NM, from on or about October 12, 2014, until on or about January 4, 2015; Artis-Naples, The Baker Museum, Naples, FL, from on or about February 19, 2015, until on or about May 17, 2015; the Portland Art Museum, Portland, OR, from on or about June 13, 2015, until on or about September 13, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including lists of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: April 7, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–08336 Filed 4–11–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8695]

Culturally Significant Objects Imported for Exhibition Determinations: “Expressionism in Germany and France: From Van Gogh to Kandinsky”

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition “Expressionism in Germany and France: From Van Gogh to Kandinsky,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or

display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, California, from on or about June 8, 2014, until on or about September 14, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6469). The mailing address is U.S. Department of State, SA-5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522-0505.

Dated: April 3, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014-08343 Filed 4-11-14; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 8694]

Culturally Significant Object Imported for Exhibition Determinations: "Traveling the Silk Road: Ancient Pathway to the Modern World"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236-3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition "Traveling the Silk Road: Ancient Pathway to the Modern World," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Cleveland Museum of Natural History, Cleveland, Ohio, from on or about May 31, 2014, until on or about October 5, 2014, the Denver Museum of Nature and Science, Denver, Colorado, from on or about November 19, 2014, until on or about May 3, 2015, and at possible additional exhibitions or venues yet to be determined, is in the

national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the imported object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6469). The mailing address is U.S. Department of State, SA-5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522-0505.

Dated: April 7, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014-08341 Filed 4-11-14; 8:45 am]

BILLING CODE 4710-05-P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on May 8, 2014, in Harrisburg, Pennsylvania. At this public hearing, the Commission will hear testimony on the projects listed in the **SUPPLEMENTARY INFORMATION** section of this notice. Such projects are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for June 5, 2014, which will be noticed separately. The Commission will also hear testimony on: (1) Amending its Regulatory Program Fee Schedule; (2) amending its Records Processing Fee Schedule; and (3) amending the Comprehensive Plan for the Water Resources of the Susquehanna River Basin. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects and other items. The deadline for the submission of written comments is May 19, 2014.

DATES: The public hearing will convene on May 8, 2014, at 2:30 p.m. The public hearing will end at 5:00 p.m. or at the conclusion of public testimony, whichever is sooner. The deadline for the submission of written comments is May 19, 2014.

ADDRESSES: The public hearing will be conducted at the Pennsylvania State Capitol, Room 8E-B, East Wing, Commonwealth Avenue, Harrisburg, Pa.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 1306; fax: (717) 238-2436.

Information concerning the applications for these projects is available at the SRBC Water Resource Portal at www.srb.net/wrp. Materials and supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at www.srb.net/pubinfo/docs/2009-02%20Access%20to%20Records%20Policy%209-10-09.PDF.

SUPPLEMENTARY INFORMATION: The public hearing will cover: (1) Amendment to its Regulatory Program Fee Schedule; (2) amendment to its Records Processing Fee Schedule; and (3) amendment to the Comprehensive Plan for the Water Resources of the Susquehanna River Basin. The public hearing will also cover the following projects:

Public Hearing—Projects Scheduled for Action

1. Project Sponsor and Facility: DS Waters of America, Inc., Clay Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.115 mgd (30-day average) from Well 6.

2. Project Sponsor and Facility: Healthy Properties, Inc. (Sugar Creek), North Towanda Township, Bradford County, Pa. Application for renewal and modification to increase surface water withdrawal by an additional 0.549 mgd (peak day), for a total of up to 0.999 mgd (peak day) (Docket No. 20100308).

3. Project Sponsor and Facility: IBM Corporation, Village of Owego, Tioga County, N.Y. Application for groundwater withdrawal of up to 0.002 mgd (30-day average) from Well 415.

4. Project Sponsor and Facility: Jay Township Water Authority, Jay Township, Elk County, Pa. Application for groundwater withdrawal of up to 0.265 mgd (30-day average) from Byrnedale Well #1.

5. Project Sponsor and Facility: LDG Innovation, LLC (Tioga River), Lawrenceville Borough, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.750 mgd (peak day) (Docket No. 20100311).

6. Project Sponsor: Leola Sewer Authority. Project Facility: Upper Leacock Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.075 mgd (30-day average) from Well 13 (Docket No. 19820601).

7. Project Sponsor and Facility: Mountain Energy Services, Inc. (Tunkhannock Creek), Tunkhannock Township, Wyoming County, Pa. Application for renewal of surface water

withdrawal of up to 1.498 mgd (peak day) (Docket No. 20100309).

8. Project Sponsor and Facility: Newport Borough Water Authority, Oliver Township, Perry County, Pa. Application for groundwater withdrawal of up to 0.162 mgd (30-day average) from Well 1.

9. Project Sponsor: Pennsylvania Department of Environmental Protection—South-central Regional Office, City of Harrisburg, Dauphin County, Pa. Facility Location: Leacock Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.576 mgd (30-day average) from Stoltzfus Well.

10. Project Sponsor: Pennsylvania Department of Environmental Protection—South-central Regional Office, City of Harrisburg, Dauphin County, Pa. Facility Location: Leacock Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.432 mgd (30-day average) from Township Well.

11. Project Sponsor and Facility: Pennsylvania General Energy Company, L.L.C. (Pine Creek), Watson Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 0.918 mgd (peak day) (Docket No. 20100610).

12. Project Sponsor and Facility: Pro-Environmental, LLC (Martins Creek), Lathrop Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.999 mgd (peak day).

13. Project Sponsor and Facility: Southwestern Energy Production Company (Martins Creek), Brooklyn and Harford Townships, Susquehanna County, Pa. Modification to low flow protection requirements of the surface water withdrawal approval (Docket No. 20110312).

14. Project Sponsor and Facility: Southwestern Energy Production Company (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

15. Project Sponsor and Facility: Sugar Hollow Water Services, LLC (Bowman Creek), Eaton Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 0.249 mgd (peak day) (Docket No. 20100310).

16. Project Sponsor and Facility: Susquehanna Gas Field Services LLC, Meshoppen Borough, Wyoming County, Pa. Application for renewal of groundwater withdrawal of up to 0.216 mgd (30-day average) from Meshoppen Pizza Well (Docket No. 20100612).

17. Project Sponsor and Facility: Susquehanna Gas Field Services LLC (Susquehanna River), Meshoppen Township, Wyoming County, Pa. Application for surface water withdrawal of up to 2.000 mgd (peak day).

18. Project Sponsor and Facility: Talisman Energy USA Inc. (Fall Brook), Troy Township, Bradford County, Pa. Application for renewal and modification of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20100304).

19. Project Sponsor and Facility: Talisman Energy USA Inc. (Unnamed Tributary to the North Branch Sugar Creek), Columbia Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20100305).

Public Hearing—Project Scheduled for Action Involving a Diversion

1. Project Sponsor: EOG Resources, Inc. Project Facility: Blue Valley Abandoned Mine Drainage Treatment Plant, Horton Township, Elk County, Pa. Application for renewal of into-basin diversion from the Ohio River Basin of up to 0.322 mgd (peak day) (Docket No. 20100616).

Opportunity To Appear and Comment

Interested parties may appear at the hearing to offer comments to the Commission on any project listed or other items listed above. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Ground rules will be posted on the Commission's Web site, www.srbc.net, prior to the hearing for review. The presiding officer reserves the right to modify or supplement such rules at the hearing. Written comments on any project or other items listed above may also be mailed to Mr. Richard Cairo, General Counsel, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110-1788, or submitted electronically through <http://www.srbc.net/pubinfo/publicparticipation.htm>. Comments mailed or electronically submitted must be received by the Commission on or before May 19, 2014, to be considered.

Authority: Pub. L. 91-575, 84 Stat. 1509 *et seq.*, 18 CFR Parts 806, 807, and 808.

Dated: April 4, 2014.

Stephanie L. Richardson,
Secretary to the Commission.

[FR Doc. 2014-08315 Filed 4-11-14; 8:45 am]

BILLING CODE 7040-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: High Density Traffic Airports; Slot Allocation and Transfer Methods

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. This information collection is used to allocate slots and maintain accurate records of slot transfers at High Density Traffic Airports. The information is provided by air carriers and commuter operators, or other persons holding a slot at High Density Airports.

DATES: Written comments should be submitted by June 13, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954-9362, or by email at: Kathy.DePaepe@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0524.

Title: High Density Traffic Airports; Slot Allocation and Transfer Methods.

Form Numbers: There are no FAA forms associated with this information collection.

Type of Review: Renewal of an information collection.

Background: The information is reported to the FAA by air carriers, commuter operators or others with slots at high density airports. The respondents must notify the FAA of: (1) Requests for confirmation of transferred slots; (2) slots required to be returned or slots voluntarily returned; (3) requests to be included in a lottery for available slots; (4) usage of slots on a bi-monthly basis; and (5) requests for short-term use of off-peak hour slots. The information is used to allocate and withdraw takeoff and landing slots at high density airports, and confirms transfers of slots made among the operators.

Respondents: Approximately 15 air carriers and commuter operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 34 minutes.

Estimated Total Annual Burden: 708 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP-110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

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 April 8, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP-110.

[FR Doc. 2014-08385 Filed 4-11-14; 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: Aviation Maintenance Technical Schools

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 information collected is needed to determine applicant eligibility and compliance for certification of Civil Aviation mechanics and operation of aviation mechanic schools.

DATES: Written comments should be submitted by June 13, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954-9362, or by email at: Kathy.DePaepe@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0040.
Title: Aviation Maintenance Technical Schools.

Form Numbers: FAA Form 8310-6.

Type of Review: Renewal of an information collection.

Background: The collection of information is necessary to ensure that Aviation Maintenance Technician Schools meet the minimum requirements for procedures and curriculum set forth by the FAA in FAR Part 147. Applicants submit FAA Form 8310-6, Aviation Maintenance Technician School certificate and Ratings Application, to the appropriate FAA district office for review. If the application (including supporting documentation) is satisfactory, an on-site inspection is conducted. When all FAR Part 147 requirements have been met, an aviation maintenance technician school certificate with appropriate ratings is issued.

Respondents: Approximately 174 representatives of aviation maintenance technician schools.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 3.17 hours.

Estimated Total Annual Burden: 66,134 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP-110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

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 April 8, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP-110.

[FR Doc. 2014-08348 Filed 4-11-14; 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: Implementation to the Equal Access to Justice Act

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 information is needed to determine an applicant's eligibility for an award of attorney's fees and other expenses under the Equal Access to Justice Act.

DATES: Written comments should be submitted by June 13, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954-9362, or by email at: Kathy.DePaepe@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0539.

Title: Implementation to the Equal Access to Justice Act.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The Equal Access to Justice Act provides for the award of attorney fees and other expenses to eligible individuals and entities who are prevailing parties in administrative proceedings before government agencies. Certain information must be obtained from the applicant in order to determine such applicant's eligibility for the EAJA award.

Respondents: Approximately 17 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 40 hours.

Estimated Total Annual Burden: 680 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP-110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

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 April 8, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP-110.

[FR Doc. 2014-08392 Filed 4-11-14; 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: Maintenance, Preventative Maintenance, Rebuilding and Alteration

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. FAR Part 43 prescribes the rules governing maintenance, rebuilding, and alteration of aircraft components, and is necessary to ensure this work is performed by qualified persons, and at proper intervals. This work is done by certified mechanics, repair stations, and air carriers authorized to perform major alterations and major repairs.

DATES: Written comments should be submitted by June 13, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954-9362, or by email at: Kathy.DePaepe@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0020
Title: Maintenance, Preventative Maintenance, Rebuilding and Alteration.

Form Numbers: FAA Form 337.
Type of Review: Renewal of an information collection.

Background: FAR Part 43 prescribes the rules governing maintenance, rebuilding, and alteration of aircraft components, and is necessary to ensure this work is performed by qualified

persons, and at proper intervals. This work is done by certified mechanics, repair stations, and air carriers authorized to perform major alterations and major repairs. The information collection associated with FAR 43 is necessary to ensure that maintenance, rebuilding, or alteration of aircraft, aircraft components, etc., is performed by qualified individuals and at proper intervals. Further, proper maintenance records are essential to ensure that an aircraft is properly maintained and is mechanically safe for flight.

Respondents: An estimated 87,769 certified mechanics, repair stations, and air carriers authorized to perform maintenance.

Frequency: Information is collected as needed.

Estimated Average Burden per Response: 30 minutes to one hour per response.

Estimated Total Annual Burden: 34,125 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP-110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

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: April 8, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP-110.

[FR Doc. 2014-08366 Filed 4-11-14; 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: Pilots Convicted of Alcohol or Drug-Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedure

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 requested information is needed to mitigate potential hazards presented by airmen using alcohol or drugs in flight, to identify persons possibly unsuitable for pilot certification.

DATES: Written comments should be submitted by June 13, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954-9362, or by email at: Kathy.DePaepe@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0543
Title: Pilots Convicted of Alcohol or Drug-Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedure

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: Amendments to Parts 61 and 67 of the FAR implement procedures enhance the safety of aviation commerce by identifying (i) those persons who may prove unsuitable for airman certification as indicated by an inability or unwillingness to comply with general safety regulations and, (ii) those persons who have failed to report violations of general safety regulations in concert with established FAA requirements. The amendment to 14 CFR Part 61 requires airmen to report to the FAA, within 60 days, all alcohol or drug related convictions or administrative actions.

Respondents: Approximately 1,185 pilots.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden: 197.5 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP-110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

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 April 8, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP-110.

[FR Doc. 2014-08393 Filed 4-11-14; 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: Certification: Mechanics, Repairmen, and Parachute Riggers

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. FAR part 65 prescribes requirements for mechanics, repairmen, parachute riggers, and inspection authorizations. The information collected shows applicant eligibility for certification.

DATES: Written comments should be submitted by June 13, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954-9362, or by email at: Kathy.DePaepe@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0022.

Title: Certification: Mechanics, Repairmen, and Parachute Riggers.

Form Numbers: FAA Forms 8610-1, 8610-2.

Type of Review: Renewal of an information collection.

Background: FAR Part 65 prescribes, among other things, rules governing the issuance of certificates and associated rating for mechanic, repairman, parachute riggers, and issuance of inspection authorizations. The information collected on the forms submitted for renewal is used for evaluation by the FAA, which is necessary for issuing a certificate and/or rating. Certification is necessary to ensure qualifications of the applicant.

Respondents: An estimated 66,153 mechanics, repairmen, and parachute riggers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 20 minutes.

Estimated Total Annual Burden: 44,841 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP-110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

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 April 8, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP-110.

[FR Doc. 2014-08384 Filed 4-11-14; 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: Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration, Project Status Report

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 FAA uses the information collected on form 7460-1 to determine the effect a proposed construction or alteration would have on air navigation and the National Airspace System (NAS), and the information collected on form 7460-2 to measure the progress of actual construction.

DATES: Written comments should be submitted by June 13, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954-9362, or by email at: Kathy.DePaepe@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0001.

Title: Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration, Project Status Report.

Form Numbers: FAA Forms 7460-1 and 7460-2.

Type of Review: Renewal of an information collection.

Background: 49 U.S.C. Section 44718 states that the Secretary of Transportation shall require notice of structures that may affect navigable airspace, air commerce, or air capacity. These notice requirements are contained in 14 CFR Part 77. The information is collected via FAA forms 7460-1 and 7460-2.

Respondents: Approximately 110,325 airports.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: Approximately 15 minutes.

Estimated Total Annual Burden: 22,425 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP-110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

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 April 8, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP-110.

[FR Doc. 2014-08364 Filed 4-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Victoria Regional Airport at Victoria, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Victoria Regional Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before May 12, 2014.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Ed Agnew, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW-650, Fort Worth, Texas 76137.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Mr. Jason Milewski, City Manager, at the following address: 609 Foster Field Drive, Suite F, Victoria, Texas 77904.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Mekhail, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW-650, 2601 Meacham Boulevard, Fort Worth, Texas 76137, Telephone: (817) 222-5663, email: Anthony.Mekhail@faa.gov, fax: (817) 222-5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Victoria Regional Airport under the provisions of the AIR 21.

The following is a brief overview of the request: The City of Victoria requests the release of 1 acre of non-

aeronautical airport property. The land was acquired by Victoria County on March 9, 1973. The property to be released will be sold to and revenues shall be used for the operation and maintenance at the airport. Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Victoria Regional Airport, telephone number (361) 575-4558.

Issued in Fort Worth, Texas on March 28, 2014.

Kelvin Solco,

Manager, Airports Division.

[FR Doc. 2014-08362 Filed 4-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California; Notice of Statute of Limitations on Claims

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, that are final within the meaning of 23 U.S.C. 139(J)(1). The actions relate to a proposed highway project, Ferguson Slide Permanent Restoration Project on State Route 140 from 8 miles east of Briceburg to 7.6 miles west of El Portal in the County of Mariposa, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(J)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before September 11, 2014. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: California Department of Transportation, Scott Smith, Branch Chief, Central Sierra Environmental Analysis, 800 M. Street, Suite 200,

Fresno, CA 93721, (559) 445-6172, scott.smith@dot.ca.gov, Mon.-Fri. 9:00 a.m.-5:00 p.m.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, have taken final agency actions subject to 23 U.S.C. 139(J)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Ferguson Slide Permanent Restoration Project on State Route 140 from 8 miles east of Briceburg to 7.6 miles west of El Portal in the County of Mariposa, California. Caltrans proposes to restore full highway access between Mariposa and Yosemite via State Route 140 in Mariposa County, California, by repairing or permanently bypassing the portion of State Route 140 that was blocked and damaged by the Ferguson rockslide. The existing detour was constructed during a declared emergency and was designed as a temporary solution to the closure of State Route 140. The total length of the project area is 0.7 mile. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on January 28, 2014, in the FHWA Record of Decision (ROD) issued on April 1, 2014, and in other documents in the FHWA project records. The FEIS, ROD, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans FEIS and ROD can be viewed and downloaded from the project Web site at <http://www.dot.ca.gov/dist10/environmental/projects/fergusonslide/EnvironmentalDocuments.html>.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4335].
2. Air: Clean Air Act [23 U.S.C. 109(j) and 42 U.S.C. 7521(a)].
3. Land: Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; Wild and Scenic Rivers Act [16 U.S.C. 1271-1287]; The Public Health and Welfare [42 U.S.C. 4331(b)(2)].
4. Wildlife: Federal Endangered Species Act [16 U.S.C. 1531-1543]; Fish and Wildlife Coordination Act [16

U.S.C. 661–666(C); Migratory Bird Treaty Act [16 U.S.C. 760c–760g].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470 (ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. Social and Economic: NEPA implementation [23 U.S.C. 109(h)]; Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].

7. Wetlands and Water Resources: Clean Water Act [33 U.S.C. 1344]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287].

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 13112 Invasive Species; E.O. 11988 Floodplain management; E.O. 12898 Federal actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: April 8, 2014.

Gary Sweeten,

Team Leader North, Project Delivery, Federal Highway Administration, Sacramento, California.

[FR Doc. 2014–08308 Filed 4–11–14; 8:45 am]

BILLING CODE 4910–XX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee (MCSAC); Public Meeting of the Compliance, Safety, Accountability Subcommittee

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

ACTION: Notice of MCSAC subcommittee meeting.

SUMMARY: FMCSA announces that the Motor Carrier Safety Advisory Committee's (MCSAC) Compliance, Safety, Accountability (CSA) subcommittees will meet from April 29–30, 2014, in Arlington, VA. The CSA subcommittee will meet to discuss ideas, concepts, and suggestions on FMCSA's CSA program with the intent

of preparing a letter report for submission to the full MCSAC in May 2014. The meeting is open to the public and there will be a public comment period at the end of each day.

Times and Dates: The meeting will be held Tuesday–Wednesday, April 29–30, 2014, from 9 a.m. to 4 p.m., Eastern Daylight Time (E.D.T.). The meeting will be held at the Federal Highway Administration's National Highway Institute, 1310 N. Courthouse Road, Suite 300, Arlington, VA 22201. An agenda for the meeting will be made available in advance of the meeting at <http://mcsac.fmcsa.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 385–2395, mcsac@dot.gov.

Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Dana Larkin at (617) 494–2821 or dana.larkin@dot.gov, by Wednesday, April 23, 2014.

SUPPLEMENTARY INFORMATION:

I. Background

MCSAC

MCSAC was established to provide FMCSA with advice and recommendations on motor carrier safety programs and motor carrier safety regulations. MCSAC is composed of 20 voting representatives from safety advocacy, safety enforcement, labor, and industry stakeholders of motor carrier safety. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. The Committee operates as a discretionary committee under the authority of the U.S. Department of Transportation (DOT), established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2. See FMCSA's MCSAC Web site for additional information about the committee's activities at <http://mcsac.fmcsa.dot.gov/>.

Task 12–03: CSA Subcommittee

The CSA Subcommittee will discuss information, concepts, and ideas concerning FMCSA's CSA program. As described in the task statement posted at the MCSAC Web site, the subcommittee will continue its efforts to:

1. Identify and make recommendations for enhancements of

the CSA program. These topics should include but not be limited to Safety Measurement System (SMS) and the interventions/investigative processes.

2. Prioritize recommended enhancements of CSA to enable the Agency to direct its efforts to the most important or timely needs of the program.

II. Meeting Participation

Oral comments from the public will be heard during the last half-hour of the meetings each day. Should all public comments be exhausted prior to the end of the specified period, the comment period will close. Members of the public may submit written comments on the topics to be considered during the meeting by Wednesday April 23, 2014, to Federal Docket Management System (FDMS) Docket Number FMCSA–2006–26367 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Fax:** 202–493–2251.

- **Mail:** Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.

- **Hand Delivery:** U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., E.T. Monday through Friday, except Federal holidays.

Dated: April 8, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–08365 Filed 4–11–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2014–0040]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Request for public comment on extension of a currently approved collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of

1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes a collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before June 13, 2014.

ADDRESSES: You may submit comments identified by DOT Docket No. NHTSA-2014-0040 by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1-800-647-5527.

- *Fax:* 202-493-2251

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketInfo.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Alex Ansley, Recall Management Division (NVS-215), Room W46-412, NHTSA, 1200 New Jersey Ave. Washington, DC 20590. Telephone: (202) 493-0481.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a

document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation, *see* 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following collection of information:

Title: Petitions for Hearings on Notification and Remedy of Defects.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2127-0039.

Affected Public: Businesses or others for profit.

Abstract: Sections 30118(e) and 30120(e) of Title 49 of the United States Code specify that any interested person may petition NHTSA to hold a hearing to determine whether a manufacturer of motor vehicles or motor vehicle equipment has met its obligation to notify owners, purchasers, and dealers of vehicles or equipment of a safety-related defect or noncompliance with a Federal motor vehicle safety standard in the manufacturer's products and to remedy that defect or noncompliance.

To implement these statutory provisions, NHTSA promulgated 49 CFR part 557, Petitions for Hearings on Notification and Remedy of Defects. Part 577 establishes procedures providing the submission and disposition of petitions for hearings on the issues of whether the manufacturer has met its obligation to notify owners, purchasers, and dealers of safety-related defects or noncompliance, or to remedy such defect or noncompliance free of charge.

Estimated annual burden: During NHTSA's last renewal of this information collection, the agency estimated it would receive one petition a year, with an estimated one hour of preparation for each petition, for a total of one burden hour per year. That estimate remains unchanged with this notice.

Number of respondents: 1.

Frank Borris,

Director, Office of Defects Investigation, NHTSA.

[FR Doc. 2014-08290 Filed 4-11-14; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Transportation Safety Administration

[Docket No. DOT-NHTSA-2013-0142]

Request for Comments on a New Information Collection

AGENCY: National Highway Transportation Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on January 22, 2014 (79 FR 3662).

DATES: Comments must be submitted on or before May 14, 2014.

FOR FURTHER INFORMATION CONTACT: Joshua Fikentscher, Office of Vehicle Safety Compliance (NVS-120), National Highway Traffic Safety Administration, West Building—4th Floor—Room W43-467, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. Fikentscher's phone number is (202) 366-1688.

Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2127-0052.

Title: Brake Hose Manufacturers Identification.

Form Numbers: None.

Type of Review: Extension of a currently approved information collection.

Background: 49 U.S.C. 30101 et seq., as amended (“the Safety Act”), authorizes NHTSA to issue Federal Motor Vehicle Safety Standards (FMVSS). The Safety Act mandates that in issuing any Federal motor vehicle safety standards, the agency is to consider whether the standard is reasonable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed. Using this authority, FMVSS No. 106, Brake Hoses, was issued. This standard specifies labeling and performance requirements which apply to all manufacturers of brake hoses and brake hose end fittings, and to those who assemble brake hoses. Prior to assembling or selling brake hoses, these entities must register their identification marks with NHTSA to comply with the labeling requirements of this standard. In accordance with the Paperwork Reduction Act, the agency must obtain OMB approval to continue collecting labeling information. Currently, there are 1,944 manufacturers of brake hoses and end fittings, and brake hose assemblers, registered with NHTSA. However, only approximately 20 respondents annually request to have their symbol added to or removed from the NHTSA database. To comply with this standard, each brake hose manufacturer or assembler must contact NHTSA and state that they want to be added to or removed from the NHTSA database of registered brake hose manufacturers. This action is usually initiated by the manufacturer with a brief written request via U.S. mail, facsimile, an email message, or a telephone call. Currently, a majority of the requests are received via U.S. mail and the follow-up paperwork is conducted via facsimile, U.S. mail, or electronic mail. The estimated cost for complying with this regulation is \$100 per hour. Therefore, the total annual cost is estimated to be \$3,000 (time burden of 30 hours × \$100 (cost per hour)).

Respondents: Business or other for profit.

Number of Respondents: 20.

Number of Responses: 20.

Total Annual Burden: 30 hours.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 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 the Department’s performance; (b) the accuracy of the estimated burden; (c) ways for the Department 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.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

David Hines,

Director, Office of Crash Avoidance Standards.

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Privacy Act of 1974, as Amended; System of Records Notice

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of alterations of three Privacy Act systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Financial Crimes Enforcement Network (“FinCEN”), Department of the Treasury (“Treasury”), gives notice of proposed alterations to three existing systems of records entitled “Treasury/FinCEN .001—FinCEN Investigations and Examinations System (the “Investigations and Examinations System”),” “Treasury/FinCEN .002—Suspicious Activity Report System (the “SAR System”),” and “Treasury/FinCEN .003—Bank Secrecy Act Reports System (the “BSA System”).” The systems of records were last published in their entirety on October 1, 2012, at 77 FR 60016, 77 FR 60017, and 77 FR 60020, respectively.

DATES: Comments must be received no later than May 14, 2014. This altered system of records will be effective May 19, 2014 unless the Department receives comments which would result in a contrary determination.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, VA 22183–0039, Attention: Revisions to PA System of Records-Comments. Comments also may be submitted by electronic mail to the following Internet address:

regcomments@fincen.gov, with the above caption in the body of the text.

Inspection of comments: Comments are available on www.regulations.gov and are posted when received. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room, Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call).

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION: FinCEN has conducted a review of its Privacy Act systems of records for compliance with the Privacy Act (5 U.S.C. 552a) and with Appendix 1 to OMB Circular A–130, “Federal Agency Responsibilities for Maintaining Records About Individuals,” dated November 30, 2000, and proposes to alter three of its current systems of records. The Privacy Act requires FinCEN to publish these notices.

The systems of records contain information collected under the statutory authority of the Bank Secrecy Act, Title I and II of Public Law 91–508, as amended, and codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, or any other authority exercised by FinCEN to compel the reporting of records, such as section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Public Law 111–195. These systems of records may also include information or records that contribute to effective law enforcement and regulation of financial institutions and non-financial trades or businesses, including, but not limited to, subject files on individuals, corporations, and other legal entities. The Bank Secrecy Act authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions and individuals to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures. The regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR chapter X. The Secretary has delegated his authority to administer the Bank Secrecy Act to the Director of FinCEN.

Suspicious transaction reporting is required by regulations issued by FinCEN and the supervisory agencies

that examine and regulate the safety and soundness of financial institutions, namely the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the National Credit Union Administration (collectively, the "Federal Supervisory Agencies").¹ The requirements of FinCEN and the Federal Supervisory Agencies create an integrated system for reporting suspicious activity and known or suspected crimes. Under these requirements, financial institutions file a single uniform Suspicious Activity Report (a "SAR") with FinCEN. Prior to the development of the integrated SAR filing system, a financial institution reporting a known or suspected violation of law was required to file multiple copies of criminal referral forms with its Federal Supervisory Agency and federal law enforcement agencies. Each Federal Supervisory Agency had promulgated a different form. Under the current system, a financial institution meets its obligation to report a known or suspected violation of law by filing one SAR with FinCEN.

In the course of its review, FinCEN identified a potential use of Privacy Act records that may not be clear under the Privacy Act or the published routine uses. The Privacy Act permits disclosure "to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties." 5 U.S.C. 552a(b)(1). At FinCEN, student volunteers work on projects relating to official programs and operations. This sharing is both appropriate and necessary for the efficient conduct of government. It is also in the best interest of both the individual and the public because it enables FinCEN to better administer the information it maintains and facilitates use of information in accordance with applicable laws and regulations to further FinCEN's mission. For example, under 5 U.S.C. 3111, agencies may receive unpaid services from students; such students are not, however, considered "employees of the agency" for many purposes. Consequently, FinCEN is proposing to add the following new routine use to each of its system notices:

Provide records to student volunteers and other individuals not having the status of agency employees, if they need access to the

records to perform services as authorized under law relating to the official programs and operations of FinCEN. Individuals provided records under this routine use are subject to the same requirements and limitations on disclosure as are applicable to FinCEN officers and employees.

This routine use is compatible with the purpose for which the records are collected because providing the records to student volunteers and other individuals when performing services as authorized by law in furtherance of FinCEN's mission is a corollary purpose that is compatible with the purpose for which the records were originally collected. Moreover, disclosures under this routine use will enable FinCEN to better administer the records it maintains and will facilitate the use of records in accordance with applicable laws and regulations. The individuals covered by this routine use would be required to meet the same requirements as FinCEN employees relating to the protection of Privacy Act records, such as completing privacy and security training which FinCEN employees currently are required to complete annually. The Department of the Treasury has published Department-wide systems of records notices that contain a routine use allowing student volunteers to view personnel and other Privacy Act records. FinCEN notes that other agencies also have similar routine uses in some of their systems notices. The Department of Justice, for example, has published a routine use that allows its student interns to access criminal investigative files.

Information in the systems of records may be retrieved by personal identifier. The Privacy Act requires the Treasury to give general notice, and opportunity to comment, to the public when making substantive changes to these Systems. Because FinCEN proposes to add a new routine use to each of its systems notices, FinCEN is providing notice and public comment opportunity. The notices were last published in their entirety on October 1, 2012, beginning at 77 FR 60014.

In accordance with 5 U.S.C. 552a(r), Treasury has provided a report of this system of records alterations to OMB and to Congress.

For the reasons set forth above, FinCEN proposes to alter the FinCEN Investigations and Examinations System, the SAR System, and the BSA System, as follows:

Treasury/FinCEN.001

SYSTEM NAME:

FinCEN Investigations and Examinations System—Treasury/FinCEN.

SYSTEM LOCATION:

The Internal Revenue Service Enterprise Computing Center Detroit (ECCD), 985 Michigan Avenue, Detroit, Michigan 48226-1129; Internal Revenue Service Enterprise Computing Center Martinsburg (ECCM), 295 Murall Drive, Kearneysville, West Virginia 25436; Bureau of the Public Debt, P.O. Box 7015, Parkersburg, West Virginia 26106-7015; and Financial Crimes Enforcement Network (FinCEN), P.O. Box 39, Vienna, Virginia 22183-0039.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who relate in any manner to official FinCEN efforts in support of the enforcement of the Bank Secrecy Act and money-laundering and other financial crimes. Such individuals may include, but are not limited to, subjects of investigations and prosecutions; suspects in investigations; victims of such crimes; witnesses in such investigations and prosecutions; and close relatives and associates of any of these individuals who may be relevant to an investigation; (2) current and former FinCEN personnel whom FinCEN considers relevant to an investigation or inquiry; and (3) individuals who are the subject of unsolicited information possibly relevant to violations of law or regulations, who offer unsolicited information relating to such violations, who request assistance from FinCEN, and who make inquiries of FinCEN.

CATEGORIES OF RECORDS IN THE SYSTEM:

Every possible type of information that contributes to effective law enforcement and regulation of financial institutions may be maintained in this system of records, including, but not limited to, subject files on individuals, corporations, and other legal entities; information provided pursuant to the Bank Secrecy Act or any other authority exercised by FinCEN to compel the reporting of records; information gathered pursuant to search warrants; statements of witnesses; information relating to past queries of the FinCEN Data Base; criminal referral information; complaint information; identifying information regarding witnesses, relatives, and associates; investigative reports; and intelligence reports. Records include queries and the results of queries made by FinCEN customers (see discussions of SAR System Users and BSA Report System Users in the system of records notices for Suspicious Activity Reporting System—Treasury/FinCEN.002 and Bank Secrecy Act Reports System—Treasury/FinCEN.003, respectively), and by FinCEN employees

¹ For purposes of this notice, the term "Financial Supervisory Agencies" also includes the now defunct Office of Thrift Supervision ("OTS") to the extent that the SAR System includes information from reports filed pursuant to rules OTS issued.

on behalf of investigatory agencies, financial intelligence units, other FinCEN customers, and FinCEN itself.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 31 U.S.C. 5311–5314, 5316–5332; 31 U.S.C. 310; 31 CFR chapter X; Pub. L. 111–195, 124 Stat. 1312; Treasury Department Order 180–01 (September 26, 2002).

PURPOSE(S):

The purpose of this system of records is to support FinCEN's efforts to provide a government-wide, multi-source intelligence and analytical network to support the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes, and other domestic and international criminal, tax, and regulatory investigations and proceedings, including examinations, and to support the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism. A FinCEN Investigations and Examinations System User is an agency or organization that has been granted access to the information in this system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be used to:

(1) Provide responses to queries from Federal, State, territorial, and local law enforcement and regulatory agencies, both foreign and domestic, regarding Bank Secrecy Act and other financial crime enforcement;

(2) Furnish information to other Federal, State, local, territorial, and foreign law enforcement and regulatory agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where FinCEN becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(3) Furnish information to the Department of Defense, to support its role in the detection and monitoring of aerial and maritime transit of illegal drugs into the United States and any other role in support of law enforcement that the law may mandate;

(4) Respond to queries from INTERPOL in accordance with agreed coordination procedures between FinCEN and INTERPOL;

(5) Furnish information to individuals and organizations, in the course of enforcement efforts, to the extent necessary to elicit information pertinent to financial law enforcement;

(6) Furnish information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with civil or criminal law proceedings;

(7) Furnish information to the news media in accordance with the guidelines contained in 28 CFR 50.2, which relate to civil and criminal proceedings;

(8) Provide information or records to the United States Intelligence Community, within the meaning of Executive Order 12333 (December 4, 1981) as amended, to further those agencies' efforts with respect to national security consistent with applicable law;

(9) Disclose information or records to any person with whom FinCEN, ECCD, ECCM, or a FinCEN Investigations and Examinations System User contracts to provide consulting, data processing, clerical, secretarial functions, and other services relating to the official programs and operations of FinCEN, ECCD, ECCM, or the FinCEN Investigations and Examinations System User;

(10) To appropriate agencies, entities, and persons when (a) FinCEN suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) FinCEN 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 FinCEN or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FinCEN's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm; and

(11) Provide records to student volunteers and other individuals not having the status of agency employees, if they need access to the records to perform services as authorized under law relating to the official programs and operations of FinCEN. Individuals provided records under this routine use are subject to the same requirements and limitations on disclosure as are applicable to FinCEN officers and employees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media and other electronic format and on hard paper copy.

RETRIEVABILITY:

By name, address, or other unique identifier.

SAFEGUARDS:

Electronic records are password protected. Records are maintained in buildings subject to 24-hour security. Access controls will not be less than those provided by Treasury security requirements. Access to individuals is granted based on roles and responsibilities.

RETENTION AND DISPOSAL:

FinCEN personnel review records in this system each time a record is retrieved and on a periodic basis to see whether it should be retained or modified. Records in this system are updated periodically to reflect disposition of records in accordance with applicable law and record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183–0039.

NOTIFICATION PROCEDURE:

This system is exempt from notification requirements, record access requirements, and requirements that an individual be permitted to contest its contents, pursuant to the provisions of 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. Pursuant to the provisions of 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2), this system is exempt from the requirement that the record source categories be disclosed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). See 31 CFR 1.36.

Treasury/FinCEN.002**SYSTEM NAME:**

Suspicious Activity Report System (the "SAR System")—Treasury/FinCEN.

SYSTEM LOCATION:

The Internal Revenue Service Enterprise Computing Center Detroit (ECCD), 985 Michigan Avenue, Detroit, Michigan 48226-1129; Internal Revenue Service Enterprise Computing Center Martinsburg (ECCM), 295 Murall Drive, Kearneysville, West Virginia, 25436; Bureau of the Public Debt, P.O. Box 7015, Parkersburg, West Virginia, 26106-7015; and Financial Crimes Enforcement Network (FinCEN), P.O. Box 39, Vienna, Virginia 22183-0039.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The SAR System contains information from forms including, but not limited to: Form TD F 90-22.47 (Suspicious Activity Report by Depository Institutions)—to be replaced by FinCEN 111; FinCEN 101 (Suspicious Activity Report by the Securities and Futures Industries); FinCEN 102 (Suspicious Activity Report by Casinos and Card Clubs)—formerly TD F 90-22.49; FinCEN 109 (Suspicious Activity Report by Money Services Business)—formerly TD F 90-22.56. The SAR System also will contain information from Form 111 (Bank Secrecy Act (BSA) Suspicious Activity Report), after that unified form for reporting suspicious activity is made effective.

INFORMATION ON THESE FORMS CONCERNS:

(1) Individuals who or entities that are known or suspected perpetrators of a known or suspected criminal violation, or pattern of criminal violations, committed or attempted against a financial institution, or participants in a transaction or transactions conducted through the financial institution, that have been reported by the financial institution, either voluntarily, or because such a report is required under the rules of FinCEN and/or the rules of one or more of the Federal Supervisory Agencies.

(2) Individuals who or entities that are participants in transactions, conducted or attempted by, at, or through a financial institution, that have been reported because the institution knows, suspects, or has reason to suspect that: (a) The transaction involves funds derived from illegal activities or is intended or conducted to hide or disguise funds or assets derived 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; (b) the

transaction is designed to evade any regulations promulgated under Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314, 5316-5332 (the BSA); (c) the transaction has no business or apparent lawful purpose or is not the sort in which the particular customer 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; or (d) the transaction involves use of the financial institution to facilitate criminal activity;

(3) Individuals who are directors, officers, employees, agents, or otherwise affiliated with a financial institution;

(4) Individuals who or entities that are actual or potential victims of a criminal violation or series of violations;

(5) Individuals who are named as possible witnesses in connection with matters arising from any such report;

(6) Individuals or entities named as preparers of any such report;

(7) Individuals or entities named as persons to be contacted for assistance by government agencies in connection with any such report;

(8) Individuals or entities who have or might have information about individuals or criminal violations described above;

(9) Individuals or entities involved in evaluating or investigating any matters arising from any such report;

(10) Individuals, entities or organizations suspected of engaging in terrorist and other criminal activities and any person who may be affiliated with such individuals, entities or organizations;

(11) Individuals or entities named by financial institutions as persons to be contacted for further assistance by government agencies in connection with individuals, entities or organizations suspected of engaging in terrorist or other criminal activities; and

(12) Individuals or entities involved in evaluating or investigating any matters in connection with individuals, entities or organizations suspected of engaging in terrorist or other criminal activity.

CATEGORIES OF RECORDS IN THE SYSTEM:

The SAR System contains information reported to FinCEN by a financial institution (including, but not limited to, a depository institution, a money services business, a broker-dealer in securities, an insurance company, and a casino) on a Suspicious Activity Report (SAR) that is filed voluntarily or as required by FinCEN, one or more of the

Federal Supervisory Agencies, and/or any other authority. The SAR System also may contain information that may relate to terrorist or other criminal activity that is reported voluntarily to FinCEN by any individual or entity through any other means, including through FinCEN's Financial Institutions Hotline. The SAR System also may contain information relating to individuals, entities, or organizations that, based on credible evidence, are suspected of engaging in terrorist or other criminal activities, including information provided to FinCEN from financial institutions regarding such individuals, entities, or organizations. SARs contain information about the categories of persons or entities specified in "Categories of Individuals Covered by the System."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The SAR System is established and maintained in accordance with 31 U.S.C. 5318(g); 31 U.S.C. 321; and 31 U.S.C. 310; 31 CFR chapter X; Treasury Department Order 180-01 (September 26, 2002).

PURPOSE(S):

The SAR requirements of FinCEN and the Federal Supervisory Agencies create an integrated process for reporting suspicious activity and known or suspected crimes by, at, or through depository institutions, certain of their affiliates, and certain other financial institutions. The process is based on a single, uniform SAR filed with FinCEN. The SAR System has been created, as a key part of this integrated reporting process, to permit coordinated and enhanced analysis and tracking of such information, and rapid dissemination of SAR information. 31 U.S.C. 5318(g)(4)(B), which specifically requires that the agency designated as the repository for SARs refer those reports to appropriate law enforcement, supervisory and intelligence agencies, and 31 U.S.C. 5319 and 31 U.S.C. 310, which require or permit the distribution of reports filed under the Bank Secrecy Act to federal, state and local agencies that engage in criminal, regulatory and tax investigations and proceedings, agencies that engage in intelligence and counterintelligence activities, including analysis, to protect against international terrorism, certain self-regulatory organizations, appropriate foreign agencies, and foreign financial intelligence units. A SAR System User is an agency or organization that has been granted access to the information in this system. SAR System Users include the Federal Supervisory Agencies, Federal law enforcement

agencies (including the Federal Bureau of Investigation, the Internal Revenue Service, the United States Secret Service, United States Customs and Border Protection, United States Immigration and Customs Enforcement, the Drug Enforcement Administration, and the Bureau of Alcohol, Tobacco, Firearms and Explosives), appropriate federal agency Inspector General Offices having criminal law enforcement powers under the Inspector General Act of 1978 or comparable authority, the Executive Office of the United States Attorneys and the Offices of the 93 United States Attorneys, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the Federal Trade Commission, the Intelligence Community, federal agencies conducting or supporting national security background investigations under Executive Order 12968 as amended, the Government Accountability Office, State financial institution supervisory and regulatory agencies, State tax agencies, State and local law enforcement agencies, and self-regulatory organizations authorized by the SEC and CFTC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Provide information or records, electronically or manually, to a SAR System User relevant to the enforcement, regulatory, and supervisory programs and operations of that User;

(2) Provide a SAR System User, and if applicable the unit within an Executive Department to which the SAR System User reports, with reports that indicate the number, amount, individual identity, and other details concerning potential violations of law that have been the subject of SARs;

(3) Provide information or records to any appropriately authorized domestic governmental agency or self-regulatory organization charged with the responsibility of administering law, investigating or prosecuting violations of law, enforcing or implementing a statute, rule, regulation, order, or policy, or issuing a license, security clearance, contract, grant, or benefit, when relevant to the responsibilities of that agency or organization;

(4) Provide information or records to any appropriately authorized non-United States governmental agency charged with the responsibility of administering law, investigating or prosecuting violations of law, enforcing or implementing a statute, rule,

regulation, order, or policy, when relevant to the responsibilities of that agency;

(5) Provide information or records, when appropriate, to an international authority or foreign government in accordance with law and bilateral or multilateral international agreements;

(6) Disclose the existence, but not necessarily the content, of information or records pertaining to an investigation by a SAR System User, on behalf of and with the approval of that SAR System User, to another SAR System User, when FinCEN determines that such disclosure furthers the coordinated analysis and tracking of information among SAR System Users;

(7) Provide information or records to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which a SAR System User is authorized to appear, when: (a) Any of the following is a party to litigation or has an interest in litigation: (i) The SAR System User or any component thereof, or (ii) any employee of the SAR System User in his or her official capacity, or (iii) any employee of the SAR System User where the Department of Justice or the SAR System User has agreed to represent the employee, or (iv) the United States; and (b) the SAR System User determines that litigation is likely to affect the SAR System User or any of its components; (c) the SAR System User deems the use of such records by the Department of Justice or the SAR System User to be relevant and necessary to the litigation; provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected;

(8) Disclose information or records to individuals or entities to the extent necessary to elicit information pertinent to the investigation, prosecution, or enforcement of civil or criminal statutes, rules, regulations, or orders;

(9) In accordance with Executive Order 12968 (August 2, 1995) as amended, provide information or records to any appropriate government authority to determine eligibility for access to classified information to the extent relevant for matters that are by statute permissible subjects of inquiry;

(10) Provide information or records to the United States Intelligence Community, within the meaning of Executive Order 12333 (December 4, 1981) as amended, to further those agencies' efforts with respect to national security in a manner consistent with applicable law and in the conduct of intelligence or counterintelligence

activities, including analysis, to protect against international terrorism;

(11) Furnish analytic and statistical reports to government agencies and the public providing information derived from SARs in a form in which individual identities are not revealed;

(12) Disclose information or records to any person with whom FinCEN, ECCD, ECCM, or a SAR System User contracts to provide consulting, data processing, clerical, secretarial, or other services relating to the official programs and operations of FinCEN, ECCD, ECCM, or the SAR System User;

(13) Disclose information to appropriate agencies, entities, and persons when (a) FinCEN suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) FinCEN 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 FinCEN or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FinCEN's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm; and

(14) Provide records to student volunteers and other individuals not having the status of agency employees, if they need access to the records to perform services as authorized under law relating to the official programs and operations of FinCEN. Individuals provided records under this routine use are subject to the same requirements and limitations on disclosure as are applicable to FinCEN officers and employees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in magnetic media and other electronic format and on hard paper copy.

RETRIEVABILITY:

Data in the SAR System may be retrieved by particular data fields (e.g., name of financial institution or holding company, type of suspected violation, individual suspect name, witness name, and name of individual authorized to discuss the referral with government officials) or by the use of search and selection criteria.

SAFEGUARDS:

Electronic records are password protected. Records are maintained in buildings subject to 24-hour security. Access controls will not be less than those provided by Treasury security requirements. Access to individuals is granted based on roles and responsibilities.

RETENTION AND DISPOSAL:

Records in this system will be updated periodically to reflect new filings, amendments to existing filings, and disposition of records in accordance with applicable law and record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

General Policy: Deputy Director, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, Virginia 22183-0039. Computer Systems Maintenance and Administration: Director, IRS Enterprise Computing Center Detroit, 985 Michigan Avenue, Detroit, Michigan 48226-1129 and Director, IRS Enterprise Computing Center Martinsburg, 295 Murall Drive, Kearneysville, West Virginia, 25436.

NOTIFICATION PROCEDURE:

This system is exempt from notification requirements, record access requirements, and requirements that an individual be permitted to contest its contents, pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Records in this system may be provided by or obtained from: individuals; financial institutions and certain of their affiliates; Federal Supervisory Agencies; State financial institution supervisory agencies; domestic or foreign government agencies; foreign or international organizations; and commercial sources. Pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2), this system is exempt from the requirement that the record source categories be disclosed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

Treasury/FinCEN.003**SYSTEM NAME:**

Bank Secrecy Act Reports System (the "BSA System")—Treasury/FinCEN.

SYSTEM LOCATION:

Currency and Banking Retrieval System, Internal Revenue Service Enterprise Computing Center Detroit (ECCD), 985 Michigan Avenue, Detroit, Michigan 48226-1129; Internal Revenue Service Enterprise Computing Center Martinsburg (ECCM), 295 Murall Drive, Kearneysville, West Virginia, 25436; Bureau of the Public Debt, P.O. Box 7015, Parkersburg, West Virginia, 26106-7015; Treasury Enforcement Communications System, United States Customs and Border Protection, Newington, 7681 Boston Boulevard, Springfield, Virginia 22153-3140; and Financial Crimes Enforcement Network (FinCEN), P.O. Box 39, Vienna, Virginia 22183-0039.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

See persons identified in the reports specified below under "Categories of Records in the System." Specifically, the BSA System contains information from forms including, but not limited to: FinCEN Form 104 (Currency Transaction Report)—formerly IRS Form 4789; FinCEN Form 103 (Currency Transaction Report by Casinos)—formerly IRS Form 8362; FinCEN Form 103N—rescinded 1/7/07 (Currency Transaction Report by Casinos-Nevada)—formerly IRS Form 8852; FinCEN Form 8300 (Report of Cash Payments Over \$10,000 Received in a Trade or Business)—formerly IRS Form 8300; FinCEN Form 105 (Report of International Transportation of Currency or Monetary Instruments)—formerly Customs Form 4790; Treasury Form TDF 90-22.1 (Report of Foreign Bank and Financial Accounts); FinCEN Form 110 (Designation of Exempt Person)—formerly Treasury Form TDF 90-22.53; and FinCEN Form 107 (Registration of Money Services Businesses)—formerly Treasury Form TDF 90-22.55 (collectively BSA Reports); and Form 112 (Bank Secrecy Act Currency Transaction Report), after that unified form reporting transactions in currency is made effective.

Information on these forms concerns: (1) Individuals or entities filing the reports; (2) individuals or entities that are the subjects of these reports; (3) individuals or entities that are participants in reportable transactions; (4) individuals who are directors, officers, employees, agents, or otherwise affiliated with a financial institution; (5)

individuals or entities names as preparers of any such report; (6) individuals named as the owners of monetary instruments; and (7) individuals named as owners of financial accounts.

CATEGORIES OF RECORDS IN THE SYSTEM:

The BSA System contains information or reports filed under the Bank Secrecy Act and its implementing regulations (31 CFR chapter X) including, but not limited to, reports made on FinCEN Form 104 (Currency Transaction Report); FinCEN Form 103 (Currency Transaction Report by Casinos); FinCEN Form 103N (Currency Transaction Report by Casinos-Nevada); FinCEN Form 8300 (Report of Cash Payments Over \$10,000 Received in a Trade or Business); FinCEN Form 105 (Report of International Transportation of Currency or Monetary Instruments); Treasury Form TDF 90-22.1 (Report of Foreign Bank and Financial Accounts); FinCEN Form 110 (Designation of Exempt Person); and FinCEN Form 107 (Registration of Money Services Businesses) (collectively BSA Reports). The BSA System also will contain information from Form 112 (Bank Secrecy Act Currency Transaction Report), after that unified form reporting transactions in currency is made effective. These reports include names of financial institutions (including, but not limited to, depository institutions, money services businesses, broker-dealers in securities, insurance companies, and casinos), individuals and other entities filing the reports, names of financial institutions, individuals and entities that are the subjects of the reports, names of the owners of monetary instruments, account numbers, addresses, dates of birth and other personal identifiers, and the amounts of funds, currency or other monetary instruments that are associated with transactions, events, circumstances or decisions that trigger reporting requirements. (This system does not include Suspicious Activity Reports. Those reports are included in another system of records, "Suspicious Activity Reporting System—Treasury/FinCEN.002").

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The BSA Report System is established and maintained in accordance with 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314, 5316-5332; 5 U.S.C. 301; 31 U.S.C. 310; 31 CFR chapter X; Treasury Department Order 180-01 (September 26, 2002).

PURPOSE(S):

The Bank Secrecy Act, codified at 12 U.S.C. 1829b and 1951–1959 and 31 U.S.C. 5311–5314, 5316–5332 authorizes the Secretary of the Treasury to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory investigations and examinations, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism. The Secretary's authority has been implemented through regulations promulgated at 31 CFR chapter X. The purpose of this system of records is to maintain the information contained in the reports required under these regulations. This information is distributed to federal, state and local agencies that engage in criminal, regulatory and tax investigations and proceedings, agencies that engage in intelligence and counterintelligence activities, certain self-regulatory organizations, appropriate foreign agencies, and foreign financial intelligence units. A BSA Report Systems User is an agency or organization that has been granted access to the information in this system. BSA Report System Users include the Federal Supervisory Agencies, Federal law enforcement agencies (including the Federal Bureau of Investigation, the Internal Revenue Service, the United States Secret Service, United States Customs and Border Protection, United States Immigration and Customs Enforcement, the Drug Enforcement Administration, and the Bureau of Alcohol, Tobacco, Firearms and Explosives), appropriate federal agency Inspector General Offices having criminal law enforcement powers under the Inspector General Act of 1978 or comparable authority, the Executive Office of the United States Attorneys and the Offices of the 93 United States Attorneys, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the Federal Trade Commission, the Intelligence Community, federal agencies conducting or supporting national security background investigations under Executive Order 12968 as amended, the Government Accountability Office, State financial institution supervisory and regulatory agencies, State tax agencies, State and local law enforcement agencies, and self-regulatory organizations authorized by the SEC and CFTC.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

THESE RECORDS MAY BE USED TO:

(1) Provide information or records, electronically or manually, to a BSA Report System User relevant to the enforcement, regulatory, and supervisory programs and operations of that User;

(2) Provide a BSA Report System User, and if applicable the unit within an Executive Department to which the BSA Report System User reports, with reports that indicate the number, amount, individual identity of participants, and other details concerning events or activities that have been the subject of a BSA Report;

(3) Provide information or records to any appropriately authorized domestic governmental agency or self-regulatory organization charged with the responsibility of administering law, investigating or prosecuting violations of law, enforcing or implementing a statute, rule, regulation, order, or policy, or issuing a license, contract, grant, or other benefit when relevant to the responsibilities of that agency or organization;

(4) Provide information or records to any appropriately authorized non-United States governmental agency charged with the responsibility of administering law, investigating or prosecuting violations of law, enforcing or implementing a statute, rule, regulation, order, or policy, when relevant to the responsibilities of that agency;

(5) Provide information or records, when appropriate, to an international authority or foreign government in accordance with law and bilateral or multilateral international agreements;

(6) Disclose relevant information on individuals to authorized Federal and State agencies through computer matching in order to help eliminate waste, fraud, and abuse in Government programs and identify individuals who are potentially in violation of civil law, criminal law, or regulation;

(7) Disclose the existence, but not necessarily the content, of information or records pertaining to an investigation by a BSA Report System User, on behalf of and with the approval of that BSA Report System User, to another BSA Report System User, when FinCEN determines that such disclosure furthers the coordinated analysis and tracking of information among BSA Report System Users;

(8) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena,

or in connection with criminal law proceedings;

(9) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(10) In accordance with Executive Order 12968 (August 2, 1995) as amended, provide information or records to any appropriate government authority to determine eligibility for access to classified information to the extent relevant for matters that are by statute permissible subjects of inquiry;

(11) Provide information or records to the United States Intelligence Community, within the meaning of Executive Order 12333 (December 4, 1981) as amended, to further those agencies' efforts with respect to national security in a manner consistent with applicable law, and in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism;

(12) Provide information to the news media, in accordance with guidelines contained in 28 CFR 50.2, that relates to an agency's functions relating to civil and criminal proceedings;

(13) Disclose information or records to any person with whom FinCEN, ECCD, ECCM, or a BSA Report System User contracts to provide consulting, data processing, clerical, secretarial, or other services relating to the official programs and operations of FinCEN, ECCD, ECCM, or the BSA Report System User;

(14) Disclose to the public information about Money Services Businesses that have registered with FinCEN pursuant to 31 CFR 1022.380, other than information that consists of trade secrets, or that is privileged and confidential commercial or financial information;

(15) Disclose information to appropriate agencies, entities, and persons when (a) FinCEN suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) FinCEN 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 FinCEN or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FinCEN's efforts to respond to the suspected or confirmed

compromise and prevent, minimize, or remedy such harm; and

(16) Provide records to student volunteers and other individuals not having the status of agency employees, if they need access to the records to perform services as authorized under law relating to the official programs and operations of FinCEN. Individuals provided records under this routine use are subject to the same requirements and limitations on disclosure as are applicable to FinCEN officers and employees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in magnetic media and other electronic format and on hard paper copy.

RETRIEVABILITY:

By name and other unique identifier.

SAFEGUARDS:

Electronic records are password protected. Records are maintained in buildings subject to 24-hour security. Access controls will not be less than those provided by Treasury security requirements. Access to individuals is granted based on roles and responsibilities.

RETENTION AND DISPOSAL:

Records in this system will be updated periodically to reflect new filings, amendments to existing filings, and disposition of records in accordance with applicable law and record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

General Policy: Deputy Director, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, Virginia 22183-0039. Computer Systems Maintenance and Administration: Director, IRS Enterprise Computing Center Detroit, 985 Michigan Avenue, Detroit, Michigan 48226-1129, Director, IRS Enterprise Computing Center Martinsburg, 295 Murall Drive, Kearneysville, West Virginia, 25436, and Director, Office of Information Technology, U.S. Customs and Border Protection, Newington, 7681 Boston Boulevard, Springfield, Virginia 22153-3140.

NOTIFICATION PROCEDURE:

This system is exempt from notification requirements, record access requirements, and requirements that an individual be permitted to contest its contents, pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Records in this system may be provided by or obtained from: Individuals; financial institutions and certain of their affiliates; Federal Supervisory Agencies; State financial institution supervisory agencies; domestic or foreign government agencies; foreign or international organizations; and commercial sources. Pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2), this system is exempt from the requirement that the Record source categories be disclosed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

Dated: March 25, 2014.

Helen Goff Foster,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2014-08254 Filed 4-11-14; 8:45 am]

BILLING CODE 4810-2P-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4797

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4797, Sales of Business Property.

DATES: Written comments should be received on or before June 13, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie A. Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to Gerald J. Shields at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Gerald.J.Shields@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Sales of Business Property.

OMB Number: 1545-0184.

Form Number: 4797.

Abstract: Form 4797 is used by taxpayers to report sales, exchanges, or involuntary conversions of assets used in a trade or business. It is also used to compute ordinary income from recapture and the recapture of prior year losses under section 1231 of the Internal Revenue Code. In the instructions, the *Worksheet for Partners and S Corporation Shareholders To Figure Gain or Loss on Dispositions of Property for Which a Section 179 Deduction Was Claimed* is located.

Current Actions: There are no changes being made to the form at this time. The change in burden is due to changes in the instructions and agency discretion.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and farms.

Estimated Number of Respondents: 1,993,957.

Estimated Time per Respondent: 42 hours, 2 minutes.

Estimated Total Annual Burden Hours: 78,852,363.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of

information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 2, 2014.

Christie A. Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014-08355 Filed 4-11-14; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041-A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041-A, U.S. Information Return-Trust Accumulation of Charitable Amounts.

DATES: Written comments should be received on or before June 13, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie A. Preston, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Gerald J. Shields at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at Gerald.J.Shields@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: U.S. Information Return-Trust Accumulation of Charitable Amounts.

OMB Number: 1545-0094.

Form Number: 1041-A.

Abstract: Form 1041-A is used to report the information required in Internal Revenue Code section 6034 concerning accumulation and

distribution of charitable amounts. The data is used to verify the amounts for which a charitable deduction was allowed are used for charitable purposes.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, and individuals.

Estimated Number of Respondents: 119,936.

Estimated Time per Respondent: 36 hrs, 40 minutes.

Estimated Total Annual Burden Hours: 4,396,854.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 2, 2014.

Christie A. Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014-08355 Filed 4-11-14; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 1040-PR and 1040-SS

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040-PR, Planilla para la Declaración de la Contribución Federal sobre el Trabajo por Cuenta Propia (Incluyendo el Crédito Tributario Adicional por Hijos para Residentes Bona Fide de Puerto Rico) and Form 1040-SS, U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico).

DATES: Written comments should be received on or before June 13, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie A. Preston, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Gerald J. Shields, LL.M. at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at Gerald.J.Shields@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Planilla para la Declaración de la Contribución Federal sobre el Trabajo por Cuenta Propia (Incluyendo el Crédito Tributario Adicional por Hijos para Residentes Bona Fide de Puerto Rico).

OMB Number: 1545-0090.

Form Number: Form 1040-PR.

Abstract: Form 1040-PR, is used by self-employed individuals to figure and report self-employment tax under IRC chapter 2 of Subtitle A, and provide credit to the taxpayer's social security account. Anejo H-PR is used to compute household employment taxes and the Form 104-PR burden calculation includes this burden of 2,400 responses with 5,376 hours. Current Actions: There are changes, due

to Public Law 112–96, section 1001; Public Law 111–148, section 9014, which changed IRC section 1401 (b)(2); Chief Counsel request; SSA Fact Sheet: 2013 Social Security Changes, being made to the form at this time which increased taxpayer burden. This form is being submitted for renewal purposes.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 154,860.

Estimated Time per Respondent: 11 hours, 34 minutes.

Estimated Total Annual Burden Hours: 1,792,208.

Title: U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico)

OMB Number: 1545–0090.

Form Number: Form 1040–SS.

Abstract: Form 1040–SS, is used by self-employed individuals to figure and report self-employment tax under IRC chapter 2 of Subtitle A, and provide credit to the taxpayer's social security account. Both of these forms are also used by bona-fide residents of Puerto Rico to claim the additional child tax credit.

Current Actions: There are changes, due to Public Law 112–96, section 1001; Public Law 111–148, section 9014, which changed IRC section 1401 (b)(2); Chief Counsel request; SSA Fact Sheet: 2013 Social Security Changes, being made to the form at this time which increased taxpayer burden. This form is being submitted for renewal purposes.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 92,000.

Estimated Time Per Respondent: 11 hours, 28 minutes.

Estimated Total Annual Burden Hours: 1,055,240.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 2, 2014.

Christie A. Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–08351 Filed 4–11–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Internal Revenue Service Advisory Council (IRSAC); Nominations

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Request for applications.

SUMMARY: The Internal Revenue Service (IRS) requests applications of individuals to be considered for selection as members of the Internal Revenue Service Advisory Council (IRSAC). Nominations should describe and document the proposed member's qualification for IRSAC membership, including the applicant's knowledge of Circular 230 regulations and the applicant's past or current affiliations and dealings with the particular tax segment or segments of the community that the applicant wishes to represent on the council. Applications will be accepted for current vacancies from qualified individuals and from professional and public interest groups that wish to have representatives on the IRSAC. The IRSAC is comprised of no more than thirty-five (35) appointed members; approximately seven of these appointments will expire in December 2014. It is important that the IRSAC continue to represent a diverse taxpayer and stakeholder base. Accordingly, to maintain membership diversity,

selection is based on the applicant's qualifications as well as areas of expertise, geographic diversity, major stakeholder representation and customer segments.

The Internal Revenue Service Advisory Council (IRSAC) provides an organized public forum for IRS officials and representatives of the public to discuss relevant tax administration issues. The council advises the IRS on issues that have a substantive effect on federal tax administration. As an advisory body designed to focus on broad policy matters, the IRSAC reviews existing tax policy and/or recommends policies with respect to emerging tax administration issues. The IRSAC suggests operational improvements, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and advises the IRS with respect to issues having substantive effect on federal tax administration.

DATES: Written applications will be accepted from May 1, 2014 through June 13, 2014.

ADDRESSES: Applications should be sent to the Internal Revenue Service, National Public Liaison, CL:NPL:P, Room 7559 IR, 1111 Constitution Avenue NW., Washington, DC 20224, Attn: Ms. Lorenza Wilds; or by email: publicliaison@irs.gov. Applications may be submitted by mail to the address above or faxed to 855–811–8021. Application packages are available on the Tax Professional's Page, which is located on the IRS Internet Web site at <http://www.irs.gov/Tax-Professionals>.

FOR FURTHER INFORMATION CONTACT: Ms. Lorenza Wilds, 202–317–6851 (not a toll-free number).

SUPPLEMENTARY INFORMATION: IRSAC was authorized under the Federal Advisory Committee Act, Public Law 92–463., the first Advisory Group to the Commissioner of Internal Revenue—or the Commissioner's Advisory Group (“CAG”)—was established in 1953 as a “national policy and/or issue advisory committee.” Renamed in 1998, the Internal Revenue Service Advisory Council (IRSAC) reflects the agency-wide scope of its focus as an advisory body to the entire agency. The IRSAC's primary purpose is to provide an organized public forum for senior IRS executives and representatives of the public to discuss relevant tax administration issues.

Conveying the public's perception of IRS activities, the IRSAC is comprised of individuals who bring substantial, disparate experience and diverse backgrounds on the Council's activities. Membership is balanced to include

representation from the taxpaying public, the tax professional community, small and large businesses, international, wage and investment taxpayers and the knowledge of Circular 230.

IRSAC members are nominated by the Commissioner of the Internal Revenue Service with the concurrence of the Secretary of the Treasury to serve a three year term. There are four subcommittees of IRSAC, the (Small Business/Self Employed (SB/SE); Large Business and International (LB&I); Wage & Investment (W&I); and the Office of Professional Responsibility (OPR).

Members are not paid for their services. However, travel expenses for working sessions, public meetings and

orientation sessions, such as airfare, per diem, and transportation to and from airports, train stations, etc., are reimbursed within prescribed federal travel limitations.

An acknowledgment of receipt will be sent to all applicants. In accordance with the Department of Treasury Directive 21-03, a clearance process including, annual tax checks, and a practitioner check with the Return Preparer Office, and the Office of Professional Responsibility will be conducted. In addition, all applicants deemed "best qualified" will have to undergo a Federal Bureau of Investigation (FBI) fingerprint check. Federally-registered lobbyists cannot be members of the IRSAC.

Equal opportunity practices will be followed for all appointments to the IRSAC in accordance with the Department of Treasury and IRS policies. The IRS has special interest in assuring that women and men, members of all races and national origins, and individuals with disabilities are adequately represented on advisory committees: and therefore, extends particular encouragement to nominations from such appropriately qualified candidates.

Dated: April 7, 2014.

Candice Cromling,

Director, National Public Liaison.

[FR Doc. 2014-08357 Filed 4-11-14; 8:45 am]

BILLING CODE 4830-01-P



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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 922

Proposed Expansion and Regulatory Revision of Gulf of the Farallones
and Cordell Bank National Marine Sanctuaries; Proposed Rule

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Part 922**

[Docket No. 130405335-4240-01]

RIN 0648-BD18

Proposed Expansion and Regulatory Revision of Gulf of the Farallones and Cordell Bank National Marine Sanctuaries

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing to expand the boundaries of Gulf of the Farallones National Marine Sanctuary (GFNMS) and Cordell Bank National Marine Sanctuary (CBNMS) to an area north and west of their current boundaries, as well as to amend existing sanctuary regulations and add new regulations. NOAA is also proposing to revise the corresponding sanctuary terms of designation and management plans. The purpose of this action is to extend national marine sanctuary protections to an area that has nationally significant marine resources and habitats and is the source of nutrient-rich upwelled waters for the existing sanctuaries. A draft environmental impact statement and draft revised management plans have been prepared for this proposed action. NOAA is soliciting public comment on the proposed rule, draft environmental impact statement, and draft revised management plans.

DATES: Comments on this proposed rule will be considered if received by June 30, 2014. Public hearings will be held as detailed below:

(1) Sausalito, CA

Date: May 22, 2014.

Location: U.S. Army Corps of Engineers Bay Model Visitor Center.
Address: 2100 Bridgeway Blvd., Sausalito, CA 94965.
Time: 6 p.m.

(2) Point Arena, CA

Date: June 16, 2014.

Location: Point Arena City Hall.
Address: 451 School St., Point Arena, CA 95468.
Time: 6 p.m.

(3) Gualala, CA

Date: June 17, 2014.

Location: Gualala Community Center.
Address: 47950 Center St., Gualala, CA 95445.
Time: 6 p.m.

(4) Bodega Bay, CA

Date: June 18, 2014.

Location: Grange Hall.
Address: 1370 Bodega Ave., Bodega Bay, CA 94923.
Time: 6 p.m.

ADDRESSES: You may submit comments on this document, identified by NOAA-NOS-2012-0228, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/ #!docketDetail;D=NOAA-NOS-2012-0228, click the "Comment Now!" icon, complete the required fields and enter or attach your comments.

- *Mail:* Submit written comments to Maria Brown, Sanctuary Superintendent, Gulf of the Farallones National Marine Sanctuary, 991 Marine Drive, The Presidio, San Francisco, CA 94129.

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 NOAA. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. ONMS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT:

Maria Brown at Maria.Brown@noaa.gov or 415-561-6622; or Dan Howard at Dan.Howard@noaa.gov or 415-663-0314.

SUPPLEMENTARY INFORMATION:**I. Introduction***A. Gulf of the Farallones and Cordell Bank National Marine Sanctuaries*

Gulf of the Farallones National Marine Sanctuary

GFNMS was designated in 1981, and was established to protect and preserve a unique and fragile ecological community, including the largest seabird colony in the contiguous United States and diverse and abundant marine

mammals. GFNMS is located along and offshore California's north-central coast, west of northern San Mateo, San Francisco, Marin and southern Sonoma Counties. GFNMS is composed of approximately 1,279 square statute miles (966 square nautical miles) of offshore waters extending out to and around the Farallon Islands and nearshore waters (up to the mean high water line) from Bodega Head to Rocky Point in Marin. The Farallon Islands lie along the outer edge of the continental shelf, between 15 and 22 statute miles (13 and 19 nmi) southwest of Point Reyes and approximately 30 miles (26 nmi) due west of San Francisco. In addition to sandy beaches, rocky cliffs, small coves, and offshore stacks, GFNMS includes open bays (Bodega Bay, Drakes Bay) and enclosed bays or estuaries (Bolinis Lagoon, Tomales Bay, Estero Americano, and Estero de San Antonio). GFNMS is located inshore of the California current, and its waters are characterized by wind-driven upwelling, localized eddies, counter-current gyres, high nutrient supply, and high levels of phytoplankton.

Cordell Bank National Marine Sanctuary

CBNMS was designated in 1989, and was established to protect and preserve the extraordinary ecosystem, including invertebrates, marine birds, mammals, and other natural resources, of Cordell Bank and its surrounding waters. CBNMS is located offshore of California's north-central coast, off of Marin County. CBNMS protects an area of 529 square statute miles (399 square nautical miles). The main feature of the sanctuary is Cordell Bank, an offshore granite bank located on the edge of the continental shelf, about 49 miles (43 nmi) northwest of the Golden Gate Bridge and 23 miles (20 nmi) west of the Point Reyes lighthouse. CBNMS is entirely offshore and shares its southern and eastern boundary with GFNMS. Similar to GFNMS, CBNMS is located in a major coastal upwelling system. The combination of oceanic conditions and undersea topography provides for a highly productive environment in a discrete offshore area. Prevailing currents push nutrients from upwelling southward along the coast, moving nutrients and other prey over the upper levels of the Bank. The vertical relief and hard substrate of the Bank provide benthic habitat with near-shore characteristics in an open ocean environment 23 miles (20 nmi) from shore. The combination of sedentary plants and animals typical of nearshore waters in close proximity to open ocean species like blue whales and albatross creates a rare mix of species and a

unique biological community at CBNMS.

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*) gives NOAA the authority to expand national marine sanctuaries to meet the purposes and policies of the NMSA, including:

- “. . . to provide authority for comprehensive and coordinated conservation and management of these marine areas [national marine sanctuaries], and activities affecting them, in a manner which complements existing regulatory authorities (16 U.S.C. 1431(b)(2)); [and]

- to maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations and ecological processes . . .” (16 U.S.C. 1431(b)(3)).

The NMSA also requires NOAA to periodically review and evaluate progress in implementing the management plan and goals for each national marine sanctuary. The management plans and regulations must be revised as necessary to fulfill the purposes and policies of the NMSA (16 U.S.C. 1434(e)) to ensure that each sanctuary continues to best conserve, protect, and enhance their nationally significant living and cultural resources.

In addition to expanding the boundaries of GFNMS and CBNMS, the proposed action would revise the sanctuaries' management plans. Application of the NMSA to the expanded sanctuary boundaries through the proposed action would provide comprehensive and coordinated management for the Point Arena upwelling area and south to the existing national marine sanctuaries. Some of the GFNMS and CBNMS regulations would be extended to the expansion area without changes, some regulations would be altered, and some new regulations would be added in order to best suit the resource protection needs of the expanded sanctuaries. The regulatory changes are described in detail below in the “Summary of the Regulatory Amendments” section. The boundary expansion, regulatory changes, and new management plans would result in additional safeguards for the resources of the area while facilitating uses compatible with resource protection.

The environmental effects of the proposed expansion of sanctuary boundaries and revisions to sanctuary regulations and management plans are analyzed in the DEIS. The public is invited to comment on the DEIS and draft management plans, which are available at www.regulations.gov/

#/docketDetail;D=NOAA-NOS-2012-0228 or http://farallones.noaa.gov/manage/expansion_cbgf.html or may be obtained by contacting the individual listed under the heading **FOR FURTHER INFORMATION CONTACT**.

B. Need for Action

The proposed action would expand the boundaries of GFNMS and CBNMS north and west of the sanctuaries' current boundaries and would include waters and submerged lands off of Marin, Sonoma and Mendocino Counties. This expansion would add to the National Marine Sanctuary System a globally significant coastal upwelling center originating off of Point Arena and flowing into GFNMS and CBNMS via wind-driven currents. The proposed action would also apply existing regulations into the expansion area, amend current regulations for GFNMS and CBNMS, and add new regulations. Together these regulatory changes would provide comprehensive management and protection of the nationally significant resources of the area encompassed by the current sanctuaries and the expansion area.

The proposed expansion area, from the upwelling off the Point Arena coast and the waters south to GFNMS and CBNMS, is an integral geographic component of the overall marine ecosystem for these sanctuaries. The upwelled water, rich with nutrients, that flows from the Point Arena upwelling center is the regional ecosystem driver for productivity in coastal waters of north-central California. Flowing south from Point Arena, the area supports a marine food web made up of many species of algae, invertebrates, fish, seabirds, and marine mammals. Some species are transitory, travelling hundreds or thousands of miles to the region, such as endangered blue whales, albatross, shearwaters, king salmon, white and salmon sharks, while others live year round in the sanctuaries, such as Dungeness crab, sponges, other benthic invertebrates and many species of rockfish. Of note, the largest assemblage of breeding seabirds in the contiguous United States is at the Farallon Islands, and each year their breeding success depends on a healthy and productive marine ecosystem to allow nesting adults and fledgling young to feed and flourish. Given that these sensitive resources are particularly susceptible to damage from human activities, including this area within CBNMS and GFNMS would conserve and protect critical resources by preventing or reducing human-caused impacts such as marine pollution, and wildlife and seabed disturbance.

In addition, the proposed action would protect significant submerged cultural resources and historical properties, as defined by the National Historic Preservation Act and its regulations (historical properties include but are not limited to: Artifacts, records, remains related to or located in the properties and properties of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria). There are several existing state and federal laws that provide some degree of protection of historical resources, but the State of California regulations only extend 3 nautical miles offshore and existing federal regulations do not provide comprehensive protection of these resources. Records document over 200 vessel and aircraft losses between 1820 and 1961 along California's north-central coast from Bodega Head north to Point Arena. Submerged archaeological remnants related to a number of former doghole ports, are likely to exist in the area. Doghole ports were small ports on the Pacific Coast between Central California and Southern Oregon that operated between the mid-1800s until 1939. Such archaeological remnants could include landings, wire, trapeze loading chutes and offshore moorings.

While there is no documentation of submerged Native American human settlements in the proposed boundary expansion area, some may exist there, since Coast Miwok and Pomo peoples have lived and harvested the resources of this abundant marine landscape for thousands of years. Sea level rise at the end of the last great Ice Age inundated a large area that was likely used by these peoples when it was dry land. The proposed action would prohibit possession, moving, removing, or injuring sanctuary historical resources.

C. History of the Proposed Boundary Expansion

In 2001, NOAA received public comment during the joint management plan review scoping meetings requesting that GFNMS and CBNMS be expanded north and west. Since 2003, sanctuary advisory councils for both national marine sanctuaries have regularly discussed and supported boundary expansion northward and westward at advisory council meetings, which are open to the public. In addition to the public and advisory council input, legislation was proposed between 2004 and 2011 by then-Congresswoman Lynn Woolsey, Senator Barbara Boxer, and cosponsors, to expand and protect GFNMS and CBNMS, but was never passed by Congress. Congressional, public, and

NOAA interest in expanding CBNMS and GFNMS stemmed from a desire to protect the biologically rich underwater habitat and important upwelling center off Point Arena, which, as described, is the source of nationally significant nutrient-rich waters.

The sanctuary advisory councils formally expressed support for the proposed boundary expansion and protection legislation in four resolutions. On April 19, 2007, the Gulf of the Farallones Advisory Council passed a resolution supporting sanctuary boundary expansion. On September 19, 2007, the CBNMS Advisory Council passed a resolution supporting protection for Bodega Canyon via proposed legislation. On December 13, 2007, the GFNMS Advisory Council passed another resolution supporting legislation to expand the sanctuaries. On November 11, 2011, the GFNMS Advisory Council passed a third resolution which acknowledged the legislation under consideration at that time and again supported expanding the GFNMS and CBNMS boundaries.

As a result of the public interest in boundary expansion and the potential need for and benefits from additional resource protection, in 2008 NOAA included boundary expansion actions in the revised management plans for CBNMS and GFNMS. The strategies (GFNMS Resource Protection Action Plan, Strategy RP-9 and CBNMS Administration Action Plan, Strategy AD-10) indicated the sanctuary managers would develop a framework to evaluate boundary alternatives, with public input. Some of the recommended criteria included consideration of boundary changes that would: Be inclusive and ensure the maintenance of the area's natural ecosystem, including its contribution to biological productivity; be biogeographically representative; facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of the marine resources; and provide additional comprehensive and coordinated management of the area.

Due to continued interest in expanding GFNMS and CBNMS, NOAA, in compliance with Section 304(e) of the NMSA, conducted public scoping from December 21, 2012, to March 1, 2013 (77 FR 75601), to identify issues associated with a proposed expansion. NOAA held three public scoping meetings during this period: One in Bodega Bay in January 2013, one in Point Arena in February 2013, and one in Gualala in February 2013. These public meetings were attended by

several hundred people. NOAA received more than 300 written submissions, along with the oral comments received during the three public scoping meetings, posted under docket number NOAA-NOS-2012-0228 on www.regulations.gov.

Comments received during this process were analyzed by ONMS staff, and are addressed in the accompanying draft environmental impact statement, with analysis of the proposed action and four alternatives. Scoping revealed wide support for the protection of areas in Sonoma and southern Mendocino Counties, as well support for the area included in the proposed expansion. Some commenters also suggested the protection of areas further north and south of the proposed expansion or other alternate boundary configurations for expanding the boundaries of GFNMS and CBNMS. Whereas some commenters were opposed to expanding the sanctuaries or specific sanctuary regulations, there was generally strong support for extending existing sanctuary regulations to the proposed expanded area, including prohibitions on oil and gas development. Many commenters also indicated opposition to any future regulations of fishing under the NMSA. Other comments focused on: Operation of motorized personal watercraft use in the expanded portions of GFNMS; protection of wildlife from human disturbance; and future development of alternative energy and aquaculture.

During the development of this action, it became clear that a wholesale extension of GFNMS and CBNMS regulations to the respective expansion areas would not be the most judicious approach in order to meet the goals of providing resource protection and allowing compatible uses. Therefore, NOAA is proposing to extend some of the regulations unchanged to the proposed expansion area, amend some of the existing regulations that would apply to both the existing sanctuaries and the proposed expansion area, and add some new regulations.

Additional information on the background of the proposed action is available at http://farallones.noaa.gov/manage/expansion_cbgf.html.

II. Summary of Proposed Changes to the Sanctuary Terms of Designation

Section 304(a)(4) of the NMSA requires that the terms of designation for national marine sanctuaries include: (1) The geographic area included within the Sanctuary; (2) the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and (3) the types of activities subject to

regulation by NOAA to protect those characteristics. This section also specifies that the terms of the designation may be modified only by the same procedures by which the original designation is made.

To implement this action, NOAA is proposing changes to the GFNMS and CBNMS terms of designation, which were last published in the **Federal Register** on November 20, 2008 (73 FR 70488).

A. Revisions to the GFNMS Terms of Designation

NOAA is proposing to revise the GFNMS terms of designation to:

1. Update the title by adding "Terms of" and removing "Document."
2. Modify the geographical description of the sanctuary in the preamble.
3. Modify Article I "Effect of Designation" by referring specifically to Gulf of the Farallones National Marine Sanctuary.
4. Modify Article II "Description of the Area" by updating the description of the size of the sanctuary and describing the proposed new boundary for the sanctuary.
5. Modify Article III "Characteristics of the Area That Give It Particular Value" by updating the description of the nationally significant characteristics of the area to include the globally significant coastal upwelling center.
6. Modify Article IV "Scope of Regulation" by updating Section 1 to include: A more complete description of "hydrocarbon operations"; adding "minerals" to what had been "hydrocarbon operations"; and adding a new subsection I, "Interfering with an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or Sanctuary regulations", and "In addition, under no circumstances would a permit or authorization be issued for exploring for, developing or producing oil, gas, or minerals within the Sanctuary."
7. Modify Article V "Relation to Other Regulatory Programs" by updating Section 3 to include the dates of designation and expansion used for certification.

The revised terms of designation are proposed to read as follows (new text in quotes and deleted text in brackets and *italics*): This proposed rule provides only those articles and sections of the terms of designation for GFNMS for which NOAA proposes a change. The full text for the current GFNMS terms of designation may be found at: Farallones.noaa.gov/manage/pdf/

GFNMS Revised_Designation_11-20-2008.pdf.

Terms of Designation for the Gulf of the Farallones National Marine Sanctuary

Preamble

Under the authority of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, Public Law 92–532 (the Act), the waters and submerged lands along the Coast of California [north and south of “Alder Creek along the 39th parallel”][*Point Reyes Headlands*], between “Manchester Beach in Mendocino County”[*Bodega Head*] and Rocky Point “in Marin County” and surrounding the Farallon Islands “and Noonday Rock along the northern coast of California,” are hereby designated a National Marine Sanctuary for the purposes of preserving and protecting this unique and fragile ecological community.

Article I. Effect of Designation

Within the area [designated in 1981 as *The Point Reyes/Farallon Islands National Marine Sanctuary (the Sanctuary)*] described in Article II, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the “Gulf of the Farallones National Marine” Sanctuary “(the Sanctuary)”. Section 1 of Article IV of the “*Terms of Designation [Document]*” lists activities of the types that are either to be regulated on the effective date of final rulemaking or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Area

The Sanctuary consists of an area of the waters and the submerged lands thereunder adjacent to the coast of California of approximately “2,490”[966] square nautical miles (nmi)[.]. “The boundary” extend[s] [ing] seaward to a distance of “30”[6] nmi “west” from the mainland “at Manchester Beach and extends south approximately 45 nmi to the northwestern corner of Cordell Bank National Marine Sanctuary (CBNMS), and extends approximately 38 nmi east along the northern boundary of CBNMS, approximately 7 nmi west of Bodega Head. The boundary extends” from [*Point Reyes to*] Bodega Bay “to Point Reyes” and 12 nmi west from the Farallon Islands and Noonday Rock, and includ[es] [ing] the intervening waters and submerged lands. “The Sanctuary includes Bolinas Lagoon, Tomales Bay, Giacomini Wetland, Estero de San Antonio (to the tide gate at Valley Ford-Franklin School Road) and Estero Americano (to the bridge at Valley Ford-Estero Road), as well as Bodega Bay, but does not include Bodega Harbor, the Salmon Creek Estuary, the Russian River Estuary, the Gualala River Estuary, the Arena Cove Pier or the Garcia River Estuary”. The precise boundaries are defined by regulation.

Article III. Characteristics of the Area That Give It Particular Value

The Sanctuary “encompasses a globally significant coastal upwelling center that” includes a rich and diverse marine ecosystem and a wide variety of marine habitats, including habitat for over 36 species of marine mammals. Rookeries for over half of California’s nesting marine bird populations and nesting areas for at least 12 of 16 known U.S. nesting marine bird species are found within the boundaries. Abundant populations of fish and shellfish are also found within the Sanctuary. The Sanctuary also has one of the largest seasonal concentrations of adult white sharks (*Carcharodon carcharias*) in the world. “The area adjacent to and offshore of Point Arena, due to seasonal winds, currents and oceanography, drives one of the most prominent and persistent upwelling centers in the world, supporting the productivity of the sanctuary. The nutrient-rich water carried down coast by currents promote thriving nearshore kelp forests, productive commercial and recreational fisheries, and diverse wildlife assemblages. Large predators, such as white sharks, sea lions, killer whales, and baleen whales, travel from thousands of miles away to feed in these productive waters. Rocky shores along the Sonoma and Mendocino County coastlines are largely intact, and teem with crustaceans, algae, fish and birds.”

Article IV. Scope of Regulation

Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, as may be necessary to ensure the management, protection, and preservation of the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and aesthetic resources and qualities of this area:

- a. [*Hydrocarbon operations*] “Exploring for, developing or producing oil, gas, or minerals within the Sanctuary”;
- b. Discharging or depositing any substance within or from beyond the boundary of the Sanctuary;
- c. Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;
- d. Activities regarding cultural or historical resources;
- e. Introducing or otherwise releasing from within or into the Sanctuary an introduced species;
- f. Taking or possessing any marine mammal, marine reptile, or bird within or above the Sanctuary except as permitted by the Marine Mammal Protection Act, Endangered Species Act, and Migratory Bird Treaty Act;
- g. Attracting or approaching any animal;
- h. Operating a vessel (i.e., watercraft of any description) within the Sanctuary[.] “; and
- i. Interfering with an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or Sanctuary regulations.

In addition, a permit or authorization may not be issued for exploring for, developing or producing oil, gas, or minerals within the Sanctuary under any circumstances.”

Article V. Relation to Other Regulatory Programs

Section 3. Other Programs

All applicable regulatory programs will remain in effect, and all permits, licenses, “approvals,” and other authorizations issued [pursuant thereto] “after January 16, 1981, with respect to activities conducted within the original Sanctuary boundary and after the effective date of the expansion of the Sanctuary with respect to activities conducted within the expansion area” will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article IV. “No valid lease, permit, license, approval or other authorization for activities in the expansion area of the Sanctuary issued by any federal, State, or local authority of competent jurisdiction and in effect on the effective date of the expansion may be terminated by the Secretary of Commerce or by his or her designee provided the holder of such authorization complies with the certification procedures established by Sanctuary regulations.” [The Sanctuary regulations shall set forth any necessary pertaining to certification procedures in order for them to remain valid.]

[End Of Terms Of Designation]

B. Revisions to the CBNMS Terms of Designation

NOAA is revising the CBNMS terms of designation to:

1. Update the title by adding “Terms of”, removing “Document”, and making minor technical changes.
2. Modify the Preamble to add “Bodega Canyon” and “submerged lands” as part of the area designated the Cordell Bank National Marine Sanctuary, and making minor technical changes.
3. Modify Article I “Effect of Designation” by making minor technical changes.
4. Modify Article II “Description of the Area” by changing the description of the size of the sanctuary and describing the proposed new boundary for the sanctuary.
5. Modify Article III “Characteristics of the Area That Give It Particular Value” by updating the description of the nationally significant characteristics of the area to include Bodega Canyon and the additional area in the Sanctuary.
6. Modify Article IV “Scope of Regulation” by updating section 1, subsection c, to include a more complete description of “hydrocarbon operations” and adding “minerals” to what had been “hydrocarbon operations”; and by adding a new subsection i to section 1, “Interfering with an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or Sanctuary regulations”, and by adding “In addition, under no circumstances would a permit or

authorization be issued for exploring for, developing or producing oil, gas, or minerals within the Sanctuary.”

7. Modify Article V “Relation to Other Regulatory Programs” by updating section 3 to include the dates of designation and expansion used for certification.

This proposed rule provides only those articles and sections for the terms of designation for CBNMS for which NOAA proposes a change. The full text for the current CBNMS terms of designation may be found at cordellbank.noaa.gov/library/74_fr_12088.pdf. The revised CBNMS terms of designation are proposed to read as follows (new text in quotes and deleted text in brackets and italics):

Terms Of Designation For The Cordell Bank National Marine Sanctuary

Preamble

Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 et seq. (the “Act”), [the]Cordell Bank, “Bodega Canyon,” and “their”[its] surrounding waters “and submerged lands” offshore northern California, as described in Article “II”[2], are hereby designated as the Cordell Bank National Marine Sanctuary (the Sanctuary) for the purpose of protecting and conserving that special, discrete, highly productive marine area and ensuring the continued availability of the conservation, ecological, research, educational, aesthetic, historical, and recreational resources therein.

Article 1. Effect of Designation

The Sanctuary was designated on May 24, 1989 (54 FR 22417). Section 308 of the National Marine Sanctuaries Act, 16 U.S.C. 1431 et seq. (NMSA), authorizes the issuance of such regulations as are necessary to implement the designation, including managing, protecting and conserving the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and aesthetic resources and qualities of the Sanctuary. Section 1 of Article IV of th“ese”[is] “Terms of” Designation [Document] lists activities of the types that are either to be regulated on the effective date of final rulemaking or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activit“y”[ies] will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Area

The Sanctuary consists of a“n approximately 971”[399] square nautical mile area of marine waters and the submerged lands thereunder encompassed by a “northern” boundary [extending approximately 250° from the northernmost] that begins approximately 6 nautical miles west of Bodega Head in Sonoma County, California and extends west approximately 38 nautical miles, coterminous with the” boundary of the Gulf of the Farallones

National Marine Sanctuary (GNFMS). “From that point, the western boundary of the Sanctuary extends south approximately 34 nautical miles. From that point, the southern boundary of the Sanctuary continues east 15 nautical miles, where it intersects the GNFMS boundary. The eastern boundary of the Sanctuary is coterminous with the GNFMS boundary, and is a series of straight lines connecting in sequence,” [to the 1,000 fathom isobath northwest of the Bank, then south along this isobath to the GNFMS boundary and back to the northeast along this boundary] to the beginning point. The precise boundaries are set forth in the regulations.

Article III. Characteristics of the Area That Give It Particular Value

Cordell Bank “and Bodega Canyon are” [is] characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive environment in a discrete, well-defined area. In addition, the Bank, “Canyon,” and “their” [its] surrounding waters may contain historical resources of national significance. The Bank consists of a series of steep-sided ridges and narrow pinnacles rising from the edge of the continental shelf. “The Bank is” [It lies on a plateau] 300–400 feet (91–122 meters) deep and ascends to within [about] 115 feet (35 meters) of the surface at its shallowest point. “Bodega Canyon is about 12 miles (10.8 nautical miles) long and is over 5,000 feet (1,524 m) deep.” The seasonal upwelling of nutrient-rich bottom waters and wide depth ranges in the vicinity, have led to a unique association of subtidal and oceanic species. The vigorous biological community flourishing at Cordell Bank “and Bodega Canyon” includes an exceptional assortment of [algae,] invertebrates, fishes, marine mammals and seabirds. “Predators travel from thousands of miles away to feed in these productive waters.”

Article IV. Scope of Regulation

Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, as may be necessary to ensure the management, protection, and preservation of the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and aesthetic resources and qualities of this area:

- a. Depositing or discharging any material or substance;
- b. Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on the Bank or on or within the line representing the 50 fathom isobath surrounding the Bank;
- c. “Exploring for, developing or producing oil, gas or minerals within the Sanctuary”[Hydrocarbon (oil and gas) activities within the Sanctuary];
- d. Anchoring on the Bank or on or within the line representing the 50 fathom contour surrounding the Bank;
- e. Activities regarding cultural or historical resources;
- f. Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or

abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;

g. Taking or possessing any marine mammal, marine reptile, or bird except as permitted under the Marine Mammal Protection Act, Endangered Species Act or Migratory Bird Treaty Act; [and]

h. Introducing or otherwise releasing from within or into the Sanctuary an introduced species[.]”; and

i. Interfering with an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or Sanctuary regulations.

In addition, a permit or authorization may not be issued for exploring for, developing or producing oil, gas, or minerals within the Sanctuary under any circumstances.”

Article V. Relation to Other Regulatory Programs

Section 3. Other Programs

All applicable regulatory programs shall remain in effect, and all permits, licenses, approvals, and other authorizations issued “after July 31, 1989, with respect to activities conducted within the original Sanctuary boundary and after the effective date of the expansion of the Sanctuary with respect to activities conducted within the expansion area” pursuant to those programs shall be valid unless prohibited by regulations implementing Article IV.

[End Of Terms Of Designation]

III. Summary of the Regulatory Amendments

With this action, NOAA is proposing to do the following:

- Amend the regulations describing the sanctuary boundaries in order to expand the sanctuaries;
- Extend existing sanctuary regulations to the expansion area without any changes;
- Amend existing sanctuary regulations that apply in either or both existing and expansion areas; and
- Add new regulations.

Gulf of the Farallones National Marine Sanctuary Regulations

The proposed new boundary for GNFMS would increase the size of the sanctuary from approximately 1,279 square miles to 3,297 square miles and would extend protection to the submerged lands and the globally-significant coastal upwelling center at Point Arena and the nutrient-rich waters that flow via wind-driven currents from the upwelling center into the existing portions of GNFMS. These nutrients are the foundation of the food-rich environment of the sanctuary.

This section describes the changes NOAA is proposing to make to the regulations for GNFMS to implement the proposed expansion of the sanctuary, which is the basis for this rulemaking. It is organized by type of regulatory amendments as follows:

- It includes proposed changes to the boundary description;
- It would apply existing regulations without changes to the proposed expansion area for

certain regulations and exceptions related to discharge, altering the seabed, taking and possessing certain species, disturbing historical resources, introducing introduced species, attracting white sharks, deserting a vessel, exemptions for Department of Defense and emergency response, and permit criteria and requirements;

- It would amend several existing regulations and apply them to either or both the existing sanctuary and proposed expansion area including prohibiting oil, gas and minerals exploration, discharging graywater, operating motorized personal watercrafts, flying aircrafts below 1,000 feet in certain designated zones, sailing cargo vessels in certain designated zones, approaching white sharks in certain designated zones, and minor technical changes to boundary coordinates;
- It would add new regulations related to interference with an investigation and the ability for NOAA to authorize certain activities otherwise prohibited.

Boundary Expansion

NOAA is proposing to modify the boundary of GFNMS to include the coastal waters and submerged lands north of the current sanctuary extending to the 39th parallel, just north of Point Arena in Mendocino County, and extending seaward to the continental slope to approximately the 10,000-foot (1,667-fathom) depth contour. NOAA is also proposing to clarify that the boundary of GFNMS includes the restored Giacomini Wetland at the northeastern end of Tomales Bay to the Mean High Water Line consistent with current sanctuary regulations. The combined expanded boundary would increase the size of the sanctuary from 1,279 square miles (966 square nautical miles) to 3,297 square miles (2,490 square nautical miles). The expanded area would extend shoreward to the Mean High Water Line, but would not include Salmon Creek Estuary, the Russian River Estuary, the Gualala River Estuary, Arena Cove east of the pier or the Garcia River Estuary. The southern boundary and portions of the western boundary of GFNMS would be coterminous with CBNMS. A map of the area under consideration may be found online at http://farallones.noaa.gov/manage/expansion_cbgf.html.

Application of Existing Regulations Without Changes to Proposed Expansion Area

Prohibition on Certain Discharges

Generally, discharging or depositing any material or other matter from within or into the sanctuary are prohibited in the existing sanctuary and would be prohibited in the proposed expansion area as well. The exceptions currently in place for some activities would apply in the proposed expansion area as well and are described below. The prohibition would apply not only to discharges and deposits originating in the sanctuary (e.g., from vessels in the sanctuary), but also, for example, from discharges and deposits occurring above the sanctuaries. A description of the impacts of this discharge regulation can be found in the discussion of the proposed action in the DEIS

published concurrently with this proposed rule. NOAA is proposing to extend the following exceptions to the GFNMS discharge/deposit prohibition to the expansion area:

1. The discharge/deposit of fish, fish parts, chumming materials or bait would be allowed as long as it occurred during the conduct of lawful fishing activities within the sanctuary.
2. The discharge/deposit of clean effluent generated incidental to vessel use and generated by a Type I or II marine sanitation device approved by the United States Coast Guard in accordance to section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA; 33 U.S.C. 1322) would be allowed for vessels less than 300 gross registered tons (GRT) or for vessels 300 GRT or above without sufficient holding tank capacity to hold sewage while within the sanctuary.
3. The discharge/deposit of clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, anchor wash, vessel engine or generator exhaust from all vessels, including cruise ships, would be allowed. An additional exception of clean vessel deck wash down would apply to all vessels other than cruise ships. The discharge/deposit of oily waste from bilge pumping would be prohibited from any vessel if the waste contained any detectable levels of harmful matter. In this case, a detectable level of oil would be interpreted to include anything that produced a visible sheen.

Prohibition on Construction on and Alteration to the Seabed

NOAA proposes to extend to the proposed expansion area for GFNMS a provision that would prohibit constructing any structure other than a navigation aid on or in the submerged lands of the Sanctuary; placing or abandoning any structure on or in the submerged lands of the Sanctuary; or drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary in any way. This provision would include four existing exceptions to this prohibition: (1) Anchoring vessels; (2) while conducting lawful fishing activities; (3) routine maintenance and construction of docks and piers on Tomales Bay; or (4) mariculture activities conducted pursuant to a valid lease, permit, license or other authorization issued by the State of California.

Prohibit the Take and Possession of Certain Species

NOAA proposes to extend to the proposed expansion area for GFNMS an existing provision that would prohibit the taking or possession of any marine mammal, sea turtle or bird within or above the sanctuary unless it is authorized by the Marine Mammal Protection Act, as amended, (MMPA; 16 U.S.C. 1361 et seq.), Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 et seq., Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 et seq., or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA. A description of the impacts of this regulation can be found in the discussion of the proposed action in

the DEIS published concurrently with this proposed rule.

Prohibit the Disturbance of Historic Resources

NOAA proposes to extend to the proposed expansion area for GFNMS an existing provision that would prohibit possessing, moving, removing, or injuring, or attempting to possess, move, remove or injure a sanctuary historical resource in the sanctuary. A description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

Prohibit the Introduction of Introduced Species

Currently, the introduction of introduced species is prohibited in the federal waters of GFNMS, with the exception of catch and release of striped bass (*Morone saxatilis*). In a separate rulemaking, NOAA proposed to amend the regulation pertaining to introduced species (79 FR 17073). This separate rulemaking would provide an exception for the introduction of non-native shellfish species for cultivation by mariculture activities in Tomales Bay, if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization and subsequently authorized by the sanctuary pursuant to 15 CFR 922.49 and 922.82. It would also give NOAA the ability to consider and authorize new or amended existing operations of commercial mariculture activities in state waters involving certain introduced species of shellfish that are determined to be non-invasive, including in Tomales Bay.

With this action, NOAA proposes to extend to the proposed expansion area for GFNMS the existing provision that prohibits the introduction of introduced species in the sanctuary as well as the new provisions that will result from the ongoing separate rulemaking mentioned above.

Prohibit White Shark Attraction and Approach

NOAA proposes to extend to the proposed expansion area for GFNMS an existing provision that would prohibit attracting a white shark anywhere within GFNMS.

Prohibit the Desertion of Vessels

NOAA proposes to extend to the proposed expansion area for GFNMS an existing provision that would prohibit deserting a vessel aground, at anchor, or adrift in the Sanctuary. NOAA also proposes to extend to the proposed expansion area for GFNMS an existing provision that would prohibit leaving harmful matter aboard a grounded or deserted vessel in the GFNMS. A description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

Exemption for Department of Defense Activities

NOAA proposes to extend to the GFNMS expansion area an existing exemption for Department of Defense (DOD) activities necessary for national defense, provided such

activities are conducted on or prior to the effective date of GFNMS designation or GFNMS expansion. DOD activities necessary for national defense initiated after the effective date of designation or expansion could be exempted after consultation with the Sanctuary Superintendent, with authority delegated from the ONMS Director. DOD activities not necessary for national defense, such as routine exercises and vessel operations, would be subject to all prohibitions that apply to GFNMS.

Exemption for Emergencies

NOAA proposes to extend to the proposed expansion area for GFNMS a provision that would exempt from sanctuary regulations for activities necessary to respond to an emergency threatening life, property, or the environment.

Exemption for Permitted Activities

NOAA proposes to extend to the expanded area an exemption for activities that are permitted by the Sanctuary Superintendent, with authority delegated from the ONMS Director, in accordance with the permit issuance criteria found in 15 CFR 922.48 and 15 CFR 922.83. It is important to note that permits would only be available for activities that violate the regulations at 15 CFR 922.83(a)(2) through (a)(16). No permit could be issued for activities that violate 15 CFR 922.83(a)(1) which prohibit the exploration for, development, or production of oil, gas or minerals within the sanctuary. A Sanctuary Superintendent may issue a sanctuary permit to: (1) Further research or monitoring related to sanctuary resources and qualities; (2) further the educational value of the sanctuary; (3) further salvage or recovery operations; or (4) assist in managing the sanctuary.

Amend Existing Regulations

Regulations That Would Apply to Both Existing Sanctuary and Proposed Expansion Area

Prohibition on Oil, Gas, or Minerals Exploration

NOAA is proposing to extend the current GFNMS regulations pertaining to oil and gas exploration, development, and production to the proposed expanded area, as well as making some amendments to the regulation that would apply both to the current GFNMS as well as the proposed expanded area, as described below.

1. NOAA is proposing to amend the current GFNMS regulation to also prohibit exploring for, developing, or producing minerals within the current boundary as well as the expansion area of GFNMS to be consistent with CBNMS and Monterey Bay National Marine Sanctuary, which are both adjacent to and abutting GFNMS. No commercial exploration, development, or production of minerals is currently conducted, nor is such activity anticipated in the near future.

2. NOAA is proposing to remove the exception for laying pipelines related to hydrocarbon operations adjacent to the sanctuary. There are no existing or proposed oil or gas pipelines in the vicinity and no currently planned or reasonably foreseeable

oil or gas development projects or leases that would necessitate pipelines. Should an oil or gas pipeline be proposed in the future, the new proposed authorization process (described below) could be used to allow such a use.

Prohibition on Certain Discharges

The discharge/deposit of graywater as defined by section 312 of the FWPCA by vessels less than 300 GRT, or vessels 300 GRT or greater without sufficient holding tank capacity to hold graywater while within the sanctuary would be exempted from the discharge prohibition. This new exception is intended to allow small vessels producing a small amount of clean graywater to continue operating within the sanctuary. This new exception would not apply to cruise ships. It would allow some vessels to discharge clean graywater within the sanctuary (which is currently prohibited) as well as in the proposed expansion area. Since the sanctuary would be expanded and the adjacent CBNMS would be expanded, the larger area may make it difficult for some larger vessels lacking holding capacity to hold graywater discharges while transiting through the sanctuaries. By allowing this discharge, non-cruise ship vessels would not be forced to hold all graywater and would have the option of discharging clean graywater in the sanctuary, consistent with the existing provisions in MBNMS and state and federal regulations. However, larger vessels greater than 300 GRT that have holding capacity would be prohibited from discharging gray water anywhere in the sanctuary.

This rule would extend to the proposed expansion area for GFNMS an existing provision that also prohibits the discharge/deposit originating outside the boundary of GFNMS that subsequently would enter the sanctuary and injure a sanctuary resource or quality. This existing regulation would be applied to the expansion area with the addition of the exception for a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold the graywater while within the Sanctuary, as mentioned above. A description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

Modification of the Prohibition on Operating Motorized Personal Watercraft

GFNMS regulations prohibit the operation of all motorized personal watercraft (MPWC), except for emergency search and rescue missions or law enforcement operations (other than routine training activities) carried out by the National Park Service, U.S. Coast Guard, Fire or Police Departments or other Federal, State or local jurisdictions. MPWC, which are often referred to as "jetskis"® or simply "skis," include several small vessel designs that share similar performance characteristics. NOAA has restricted the use of MPWC within various sanctuaries when MPWC operation poses a unique and significant threat of disturbance to sanctuary habitats and wildlife through repetitive operation within sensitive environments. NOAA's assessments of MPWC impacts indicate that unrestricted access to all

reaches of the sanctuary by such craft are likely to pose a threat to wildlife and other ocean users. Some MPWC operators commonly accelerate and decelerate repeatedly and unpredictably, travel at rapid speeds directly toward shore, and may maneuver close to rocks. Thus wildlife disturbance impacts from MPWC tend to be more likely than those from motorboat use, due to impacts in ecologically sensitive areas, often in nearshore locations. More detailed information on the impacts of MPWC can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

NOAA proposes to extend the current regulation to the proposed expanded area, but would modify it to allow for the use of a MPWC equipped with a functioning Global Positioning System (GPS) unit within four newly designated zones within the sanctuary expansion area, as described in the next section.

Regulations That Would Apply Only to Existing Sanctuary Area

Prohibit Low Flying Aircraft in Designated Zones

Currently NOAA prohibits disturbing marine mammals or seabirds by flying motorized aircraft at less than 1,000 feet over the waters within one nautical mile of the Farallon Islands, Bolinas Lagoon, or any Area of Special Biological Significance (ASBS, see description below), except to transport persons or supplies to or from the Islands or for enforcement purposes. NOAA presumes that a failure to maintain a minimum altitude of 1,000 feet above ground level over such waters disturbs marine mammals or seabirds. NOAA is proposing to rename the areas of overflight regulation "Special Wildlife Protection Zones" (SWPZs) and make small changes to the areas of overflight regulation within the existing boundaries of GFNMS. The new SWPZs would implement restrictions to disturbing marine mammals or seabirds by flying a motorized aircraft as well as to the sailing of cargo vessels. In this section, NOAA describes changing the zones from using existing state designated Areas of Special Biological Significance and specific area names to a new slightly modified configuration of Special Wildlife Protection Zones; NOAA describes overflight regulations below and describes the restrictions to cargo vessel use in a separate section below. A map of the zones under consideration may be found in the DEIS posted online at http://farallones.noaa.gov/manage/expansion_cbgf.html.

1. NOAA is proposing to no longer use the location of State-designated ASBS to define the areas where the low flying aircraft prohibition applies. Instead, NOAA would designate SWPZs as defined below. NOAA would delete the definition of ASBS in sanctuary regulations, although those areas are designated by the state of California for water quality purposes and they would continue to exist in that capacity. The existing GFNMS regulations use a combination of specified locations and State ASBS to protect sensitive seabird and pinniped areas from cargo vessel disturbance or discharge, and from low flying aircraft

disturbance. ASBS are those areas designated by California's State Water Resources Control Board as requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. ASBS are a subset of State Water Quality Protection Areas established pursuant to California Public Resources Code section 36700 *et seq.* These areas were designated based on the presence of certain species or biological communities that, because of their value or fragility, deserve special protection by preserving and maintaining natural water quality conditions to the extent practicable. Within the existing GFNMS boundaries, ASBS coincide with areas of high biological diversity and/or abundance of species, which is why NOAA originally prohibited low overflights above these ASBS areas and within one nautical mile of the edge of their boundaries. However, the ASBS in the expansion area are not in locations that would provide adequate protection to wildlife if used for low flying aircraft prohibitions. Therefore, NOAA is proposing to standardize the nomenclature for the zones where low overflight is prohibited by naming all of them SWPZs in both the existing sanctuary and the proposed expansion area.

2. Instead of continuing to use ASBS boundaries with a one nautical mile buffer and other specified locations, the new proposed regulation would prohibit disturbing marine mammals or seabirds by flying motorized aircraft at less than 1000 feet over the waters within the newly designated SWPZs (except to transport persons or supplies to or from the Farallon Islands or for enforcement purposes.) Failure to maintain a minimum altitude of 1000 feet above ground level over such waters would still be presumed to disturb marine mammals or seabirds. This presumption of disturbance could be overcome by contrary evidence that disturbance did not, in fact, occur (e.g., evidence that no marine mammals or seabirds were present in the area at the time of the low overflight).

3. SWPZs would be defined as areas of high biological diversity and/or abundance of species including federally listed and specially protected species. In particular these areas are white shark, seabird, and marine mammal (pinniped) "hotspots". White shark hotspots contain globally significant concentrations of white sharks. Seabird hotspots are areas with large historic populations, species diversity, and high concentration of nesting and roosting birds. Pinniped hotspots provide critical habitat for pupping seals and sea lions. In the proposed new boundaries for GFNMS, SWPZs would be established where such hotspots are susceptible to disturbance by low flying aircraft, cargo vessel operations, or in the case of white sharks, tourism vessels. Therefore, SWPZs are proposed to better encompass areas needing protection from certain human activities and to provide consistency between the existing and proposed areas of GFNMS.

4. There would be a total of five SWPZs in the current sanctuary boundaries coinciding with previous state ASBS boundaries, which were previously used to delineate the areas

subject to prohibitions on low flying aircraft: Tomales Point, Point Reyes, Duxbury Reef-Bolinas Lagoon, and two zones at the Farallon Islands. In the existing sanctuary boundaries, the proposed boundaries of the SWPZs would remain similar in size and location to the areas currently protected from low flying aircraft. The shape would change from circles to polygons and would be delineated around known points, islands and landmarks, instead of following ASBS boundaries with either one or two nautical mile buffers. The proposed changes are designed to aid compliance with the low overflight restriction zones by allowing for visual recognition of the zones from the air. The proposed new SWPZs would result in a slight increase in zone size for some areas and a decrease in size in other areas as defined below. For the Tomales Point zone, SWPZ 3, the boundaries would encompass the area within the sanctuary surrounding Tomales Point and the northern portion of Tomales Bay to the east shore at Toms Point, and north to Estero de San Antonio. The proposed change would increase the area by approximately 5 square miles. However, it would only increase the time an aircraft would have to stay above 1,000 feet by approximately 35 seconds if traveling at a speed of 120 miles per hour, assuming the flight line is roughly parallel to the coast. For the Point Reyes zone, SWPZ 4, the boundaries would encompass the area within the sanctuary surrounding Point Reyes. This change in shape would increase area by approximately 1.8 square miles, but it would not increase the time an aircraft would have to stay above 1,000 feet if traveling at a speed of 120 miles per hour. For the Duxbury Reef-Bolinas Lagoon zone, SWPZ 5, the boundary would encompass all of Bolinas Lagoon, but not Seadrift Lagoon, and extend west to Bolinas Bay, south to Rocky Point and north to Millers Point. The proposed change would increase area by approximately 4.5 square miles and increase the time an aircraft would have to stay above 1,000 feet by approximately 20 seconds if traveling at a speed of 120 miles per hour. The Southeast Farallon Islands Zone, SWPZ 6, extends approximately 1 nautical mile seaward of Southeast Farallon Island and Maintop Island. The proposed change would decrease the area by approximately 2.2 square miles and decrease the time an aircraft would have to stay above 1,000 feet by approximately 60 seconds if traveling at a speed of 120 miles per hour. The North Farallon Islands Zone, SWPZ 7, extends approximately 1 nautical mile seaward of North Farallon Island and Isle of St. James. The proposed change would increase the area by approximately 1.4 square miles, but would not increase the time an aircraft would have to stay above 1,000 feet if traveling at a speed of 120 miles per hour. Using points, landmarks and islands changes the shape of the five existing zones from circular to a polygon. However, the zones encompass the same wildlife hotspots as the current zones and NOAA believes such small changes in size of the new SWPZs would be inconsequential when flying an aircraft due to the short amount of additional flight time in which it would result. Also, the change in shape and the use of known points, islands

and landmarks, which can be identified from the air would likely facilitate compliance from pilots. Therefore, NOAA estimates that this proposed change in boundaries would result in a negligible change of operations for low flying aircrafts above the existing sanctuary.

Prohibit Cargo Vessels in Designated Zones

Currently NOAA prohibits cargo vessels from transiting closer than two nautical miles of the Farallon Islands, Bolinas Lagoon, or any ASBS to prevent wildlife disturbance and minimize the risk of oil spills in these areas. NOAA is proposing to amend the current prohibition on cargo vessels transiting close to sensitive wildlife areas in the sanctuary to the proposed expanded area with the following two changes. A map of the zones under consideration may be found in the DEIS posted online at http://farallones.noaa.gov/manage/expansion_cbgf.html. NOAA would replace the current zones including a two-nautical-mile buffer around the Farallon Islands, Bolinas Lagoon, or any ASBS with SWPZs that would extend 1 nautical mile into the same waters. Cargo vessels would be required to sail at least one nautical mile from any SWPZ. Although the new proposed regulation would change the buffer in the existing zones from two nautical miles to one nautical mile, the proposed new SWPZs would encompass the same areas that were previously identified in the regulations. Therefore, the proposed new cargo vessel prohibition would remain similar in size and location to the areas currently protected from cargo vessels.

As proposed, the cargo vessel prohibition zones in the existing sanctuary (which would encompass an area covering the SWPZs as well as a one-mile buffer around them) would be very similar to the areas currently protected from transiting cargo vessels, meaning that overall size and location of the zones would not significantly differ from the existing protected areas. The changes to the areas in the existing sanctuary would result in a total area that would only be 6.4 square miles larger than the existing cargo vessel prohibition zones. Therefore, this proposed change in the current boundaries would result in a negligible change for transiting cargo vessels.

Prohibit White Shark Attraction and Approach

NOAA also prohibits approaching within 50 meters of a white shark within 2 nautical miles of the Farallon Islands to prevent harassment and to reduce wildlife disturbance to white sharks. The proposed rule would amend the approach regulation in the current GFNMS regulations, as described below.

1. NOAA is proposing to refine and further delineate the zone in which it is prohibited to approach a white shark within 2 nautical miles of the Farallon Islands by creating two zones that encompass both the Southeast and North Farallon Islands. The location and size of the zones would effectively remain similar to the current prohibition at both the Southeast and North Farallon Islands, however, the area around Middle Farallon Island would be removed resulting in a total area that is smaller than the existing zone.

The previous zone was circular and surrounded all the Farallon Islands. The two new zones would be changed to a polygon and match the cargo vessel prohibition zones by creating a one nautical mile buffer around proposed SWPZs 6 and 7. The proposed regulation would prohibit disturbing white sharks by approaching within 50 meters of a white shark while within one nautical mile of, and inside, the newly designated SWPZs 6 and 7 around Southeast and North Farallon Islands. Middle Farallon Island would not be included in the approach prohibition. Middle Farallon Island is not considered to be a location of primary food source (i.e., pinnipeds) for white sharks. According to data collected by Point Blue Conservation Science (1987–2011) only one confirmed white shark predation event has occurred near middle Farallon Island during the fall season. Only a small number (30 or less) of sea lions are able to haul out on Middle Farallon Island at a time. In 2011, island biologists observed a shark thrashing several times over a number of hours, but no carcass or blood was ever observed, therefore the attack was not confirmed. Additionally, researchers and tourism operators have not been observed or reported in their logs approaching white sharks near Middle Farallon Island.

2. SWPZs 6 and 7 would be the only two SWPZs in the current sanctuary boundaries where approaching white sharks would be prohibited. The proposed boundaries of the new SWPZs are very similar to the areas currently protected from approaching white sharks around the Southeast and North Farallon Islands meaning that overall size and location would generally be the same as the existing protected areas. The combined area of the current white shark protection zone is approximately 52.3 square miles. The combined area of the two new white shark protection zones would be approximately 47.7 square miles. This is a reduction of 4.6 sq mi or approximately 10% of the current area, but that reduction is due to the removal of the Middle Farallon Island from the zone. Therefore, NOAA believes this proposed change in boundaries would result in a negligible change for researchers and tourism operators in the existing sanctuary, and that the reconfiguration of SWPZs would result in more effective resource protection.

Technical Changes to Boundaries

Minor technical changes were needed for the textual descriptions and point locations of the No-Anchoring Seagrass Protection Zones in Tomales Bay. Metric values (hectares and meters) were converted to English units to be consistent with the rest of the document. All zones with a shoreline component to their boundary are now described in language that complies with current ONMS conventions for boundary descriptions. In addition to modifying the text, the index numbers of some coordinate pairs were reordered and some coordinates were modified to accommodate the edited text. No change was made to the existing zone locations or areas, except that the boundary coordinates of Zone 5 were modified slightly so that the zone better align with GFNMS boundaries. Therefore, this proposed rule would correct minor errors

and incorporate these changes without significantly altering the size or location of the seagrass protection zones.

Regulations That Would Apply Only to Proposed Expansion Area

Motorized Personal Watercraft Zones

Operation of MPWC would be allowed only within four designated zones within the proposed expansion area and would limit access to the nearshore. The proposed regulations specify that an operable GPS unit in working condition must be carried on all MPWC accessing each zone in order to accurately and precisely navigate to MPWC zones and to ensure that the MPWC stays within the designated zones. The proposed action would allow use of MPWC in areas totaling 33.4 square nautical miles. A map of the zones under consideration may be found in the DEIS posted online at http://farallones.noaa.gov/manage/expansion_cbgf.html.

The sites of the four zones have been specifically proposed to minimize or prevent impacts on nearshore wildlife, and to protect known wildlife hotspots (which include areas of high biological diversity or abundance of species) or federally listed and specially protected species, while still allowing access to important recreational areas for surfing and where species of concern have a low likelihood of disturbance. Access to the proposed zones by conventional vessels would continue unchanged.

NOAA is proposing three year-round MPWC use zones and one seasonal MPWC zone within the GFNMS expansion area. Zone 1 is approximately 8.5 square miles and is proposed from latitude 39 to Arena Cove. This seasonal zone would be open from October through February. It would be closed from March through September to limit potential negative interactions with MPWC landing on Manchester Beach during the time Snowy Plovers, listed as threatened by the Endangered Species Act, nest on beaches. Zone 2 is approximately 26.2 square miles and is proposed from Arena Cove to Havens Neck. Prominent visual markers at Arena Cove, Moat, Saunders Landing, Iverson Landing and Haven's Neck would be used to define the eastern boundary. The proposed zone would require MPWC users to stay seaward of all the listed points at all times. Use of waypoints at each of the shoreside locations would help operators with compliance. Zone 3 is approximately 3.8 square miles and is offshore of Timber Cove. Zone 3 would be accessed through a boat ramp at Timber Cove. Zone 4 is approximately 6.1 square miles including the access route area and is proposed offshore of Bodega Head to Coleman Beach. A 100-yard access route from Bodega Harbor using the harbor entrance and two navigational buoys would allow entrance to the southern boundary of the zone. Seasonal access would also be available through Salmon Creek, at Bean Avenue and the Ranger Station.

NOAA is not proposing to change the definition of MPWC used by current GFNMS regulations in this proposed rule. However, NOAA has proposed to consolidate and standardize definitions that are common to

all sanctuaries (including modifications to definition of MPWC) in a separate rulemaking (78 FR 5998) published January 28, 2013. The reasoning behind and impacts of this proposal are being analyzed as part of the separate rulemaking with a separate public review process. A final rule is currently in development for this separate action.

Prohibit Low Flying Aircraft in Designated Zones

NOAA proposes to prohibit disturbing marine mammals or seabirds by flying motorized aircraft at less than 1,000 feet over the waters within one nautical mile of SWPZs except for enforcement purposes. Similar to the current regulations applying to the existing sanctuary, NOAA would presume that a failure to maintain a minimum altitude of 1,000 feet above ground level over such waters disturbs marine mammals or seabirds. NOAA is proposing to add two discrete SWPZs with overflight restrictions in the proposed expanded area, as described below. The new SWPZs would implement restrictions to disturbing marine mammals or seabirds by flying a motorized aircraft as well as to the sailing of cargo vessels. In this section, NOAA describes the effect of the new SWPZs to low overflight regulations and describes the restrictions to cargo vessel use in the following section.

SWPZs would be defined as areas of high biological diversity and/or abundance of species including federally listed and specially protected species. In particular these areas are white shark, seabird, and marine mammal (pinniped) "hotspots". White shark hotspots contain globally significant concentrations of white sharks. Seabird hotspots are areas with important populations, species diversity, and which support a high concentration of nesting and roosting birds. Pinniped hotspots provide vital habitat for pupping seals and sea lions. In the proposed new boundaries for GFNMS, SWPZs would be established where such hotspots are susceptible to disturbance by low flying aircraft, cargo vessel operations, or in the case of white sharks, tourism vessels. Therefore, SWPZs are proposed to better encompass areas needing protection from certain human activities and to provide consistency between the existing and proposed areas of GFNMS.

Two new SWPZs would be created in the proposed expansion area. The first zone, SWPZ 1, would extend south along the coast from Havens Neck in Mendocino County approximately 10 miles to Del Mar Point in Sonoma County and from the Mean High Water Line approximately 1.75 miles seaward. The size of the zone would be approximately 10.5 square miles. The overflight time would be about 200 seconds (3.33 minutes) for an aircraft traveling at 120 miles per hour. SWPZ 1 would include observed pinniped haul-out areas, 3 species of breeding seabird colonies and one roosting seabird species at Fish Rocks; and observed pinniped haul-out areas and 5 species of breeding seabirds at Gualala Point Island. The second zone, SWPZ 2, would extend south along the coast from Windermere Point, north of the Russian River in Sonoma County, approximately 14 miles to Duncans

Point and from the Mean High Water Line approximately 1.85 miles seaward. The size of the zone would be approximately 21.4 square miles. The overflight time would be about 375 seconds (6.25 minutes) for an aircraft traveling at 120 miles per hour. SWPZ 2 would include observed Steller Sea Lion haul out areas at Northwest Cape (Fort Ross); and harbor seal haul out areas and 5 species of breeding seabirds throughout the entire Russian River Colony Complex, which is a system of offshore rocks north and south of the Russian River. The seven zones would include 11 seabird hotspots and 9 pinniped hotspots within the existing sanctuary and the proposed sanctuary expansion area. Many of these "hotspots" are "colony complexes" which means that the area may include cliffs (used by seabirds), clusters of rocks, or tidal mudflat islands (used by pinnipeds). The combined area for all 7 SWPZs would cover 2.77% of sanctuary waters (approximately 91.5 square miles).

Prohibit Cargo Vessels in Designated Zones

Currently NOAA prohibits cargo vessels from transiting closer than two nautical miles of the Farallon Islands, Bolinas Lagoon, or any ASBS to prevent wildlife disturbance and minimize the risk of oil spills in these areas. NOAA is proposing to extend the current prohibition on cargo vessels transiting close to sensitive wildlife areas in the sanctuary to the proposed expanded area by proposing a total of two new cargo prohibition zones in the proposed expansion area.

The two proposed new cargo vessel restriction zones in the proposed expansion area would be based on the proposed SWPZs, as described above. Combined area of new proposed cargo vessel zones in expansion area would be approximately 61.7 square miles. These two new SWPZs would be inshore of known cargo vessel traffic routes, therefore NOAA does not expect them to interfere significantly with current cargo vessel traffic.

Add New Regulations

Prohibit Interference With an Investigation

NOAA proposes to add a new regulation to enhance an existing statutory prohibition on interfering with, obstructing, delaying, or preventing an investigation, search or seizure in connection with an enforcement action related to the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 et seq.).

Exemption for Authorized Activities

Current GFNMS permit regulations do not allow NOAA to authorize any prohibited activity other than through the issuance of a national marine sanctuary permit. With this action, NOAA is proposing to add to GFNMS regulations the authority to authorize certain activities such as the discharge, construction, drilling, dredging or other disturbance on submerged land, taking and possessing a marine mammal, sea turtle, or bird, and possessing historical resources, as long as those activities are permitted or licensed by another federal, State, or local agency, and as long as the applicant complies with any terms and conditions deemed necessary to protect sanctuary resources and qualities. In addition, NOAA is proposing as part of a

separate rulemaking to add to GFNMS regulations the authority to authorize new or amended existing operations of commercial mariculture activities in state waters involving certain introduced species of shellfish that are determined to be non-invasive (79 FR 17073). In the case of authorization, the activity would have to comply with such terms, but would not have to fit within the categories of activities for which a sanctuary permit may be obtained. The activities would have to be authorized by the Sanctuary Superintendent, with authority delegated from the ONMS Director, under 15 CFR 922.83(d) and 15 CFR 922.49. This authorization provision is similar to that in the existing regulations for MBNMS and five other national marine sanctuaries. The Sanctuary Superintendent may also deny an authorization or condition an approval to protect sanctuary resources.

The exemption for authorized activities in this proposed rule would result in a new management authority in GFNMS as it currently stands as well as in the proposed expanded sanctuary.

In addition, NOAA is proposing to amend in the GFNMS regulations the explanation of the procedure by which preexisting leases, permits, licenses, or rights of subsistence use or access applying to the expansion area and in existence on the effective date of the sanctuary expansion may be certified (see 15 CFR 922.84), to clarify that the certification process would only be in place in the expansion area.

Cordell Bank National Marine Sanctuary Regulations

This section describes the changes NOAA is proposing to make to the regulations for CBNMS to implement the proposed expansion of the sanctuary, which is the basis for this rulemaking. It is organized by type of regulatory amendments as follows:

- It includes proposed changes to the boundary description;
- It would apply existing regulations without changes to the proposed expansion area for certain regulations and exceptions related to discharge, prohibiting oil, gas and minerals exploration, taking and possessing certain species, introducing introduced species, exemptions for Department of Defense and emergency response, permit criteria and requirements, and issuance of emergency regulations;
- It would amend an existing regulation regarding graywater discharge and apply it to both the existing sanctuary and proposed expansion area;
- It would add new regulations related to disturbing historical resources, interference with an investigation and the ability for NOAA to authorize certain activities otherwise prohibited.

Boundary Expansion

NOAA is proposing to modify the boundary of CBNMS. The proposed new boundary for CBNMS would increase the size of the sanctuary from approximately 528 square miles (399 nautical square miles) to 1,286 square miles (971 nautical square miles) and would include the waters and submerged lands north and west of the

current sanctuary. The larger boundary for CBNMS would include Bodega Canyon, a significant bathymetric feature that contributes directly to the biological productivity of the existing sanctuary ecosystem but is not currently part of CBNMS. Submarine canyons support deep water communities and affect local and regional water circulation patterns. The eastern and northern boundaries of CBNMS would be coterminous with GFNMS.

Extension of Existing Regulations Without Changes to Proposed Expansion Area Prohibition on Certain Discharges

Generally, discharging or depositing any material or other matter from within or into the sanctuary are prohibited in the existing sanctuary and would be prohibited in the proposed expansion area as well. The exceptions currently in place for some activities would apply in the proposed expansion area as well and are described below. The prohibition would apply not only to discharges and deposits originating in the sanctuary (e.g., from vessels in the sanctuary), but also, for example, from discharges and deposits occurring above the sanctuaries. A description of the impacts of this discharge regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule. NOAA is proposing to extend the following exceptions to the CBNMS discharge/deposit prohibition to the expansion area:

1. The discharge/deposit of fish, fish parts, chumming materials or bait would be allowed as long as they were made during the conduct of lawful fishing activities within the sanctuary. This existing regulation would be applied to the expansion area without amendment. A description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

2. The discharge/deposit of clean effluent generated incidental to vessel use and generated by a Type I or II marine sanitation device approved by the United States Coast Guard in accordance to section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA; 33 U.S.C. 1322) would be allowed for vessels less than 300 gross registered tons (GRT) or for vessels 300 GRT or above without sufficient holding tank capacity to hold sewage while within the sanctuary. This existing regulation would be applied to the expansion area without amendment. A description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

3. The discharge/deposit of clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, anchor wash, vessel engine or generator exhaust from all vessels, including cruise ships, would be allowed. An additional exception of clean vessel deck wash down would apply to all vessels other than cruise ships as defined above in the existing sanctuary and the expansion area. The discharge/deposit of oily waste from bilge pumping would be prohibited from any vessel if the waste contained any detectable levels of harmful

matter. In this case, a detectable level of oil would be interpreted to include anything that produced a visible sheen. A description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

Prohibit Oil, Gas, or Minerals Exploration

NOAA is proposing to apply to the proposed expansion area for CBNMS an existing provision that would prohibit exploring for, developing or producing oil, gas, or minerals within CBNMS.

Prohibit the Take and Possession of Certain Species

NOAA is proposing to extend to the proposed expansion area for CBNMS an existing provision that prohibits the taking or possession of any marine mammal, sea turtle or bird within or above the sanctuary unless it is authorized by the Marine Mammal Protection Act, as amended, (MMPA; 16 U.S.C. 1361 et seq.), Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 et seq., Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 et seq., or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA. A description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

Prohibit the Introduction of Introduced Species

NOAA is proposing to extend to the proposed expansion area for CBNMS a provision that would prohibit introducing or otherwise releasing from within or into the sanctuary an introduced species, except striped bass (*Morone saxatilis*) released in the sanctuary during catch and release fishing. The rationale for this proposed regulation is the same as that for the proposed introduced species regulation for GFNMS.

Exemption for Department of Defense Activities

NOAA proposes to extend to the proposed expansion area for CBNMS the existing provision that would exempt the Department of Defense (DOD) from sanctuary regulations for activities carried out before the effective date of designation (for current CBNMS boundary) or before the effective date of expansion (for proposed expanded area) that are necessary for national defense. DOD activities necessary for national defense initiated after the effective date of designation (for current CBNMS boundary) or expansion date (for proposed expanded area) could be exempted after consultation between DOD and the Sanctuary Superintendent, with authority delegated from the ONMS Director. DOD activities not necessary for national defense, such as routine exercises and vessel operations, would be subject to all prohibitions that apply to CBNMS.

Exemption for Emergencies

NOAA proposes to apply to the proposed expansion area for CBNMS the existing exemption for activities necessary to respond to an emergency threatening life, property, or the environment.

Exemption for Permitted Activities

NOAA proposes to provide an exemption for activities that are permitted by the Sanctuary Superintendent, with authority delegated from the ONMS Director, in accordance with the permit issuance criteria found in 15 CFR 922.48 and 15 CFR 922.113. The Sanctuary Superintendent may issue a sanctuary permit to: (1) Further research or monitoring related to sanctuary resources and qualities; (2) further the educational value of the sanctuary; (3) further salvage or recovery operations; or (4) assist in managing the sanctuary. It is important to note that permits would only be available for activities that otherwise violate the regulations at 15 CFR 922.112, (a)(2) through (a)(7). No permit could be issued for activities that violate 15 CFR 922.112(a)(1), which prohibits the exploration for, development, or production of oil, gas or minerals within the sanctuary.

Provision for Emergency Regulation

NOAA proposes to extend to the proposed expansion area for CBNMS a provision that would allow NOAA to issue emergency regulations, within the limits of the NMSA, for no more than 120 days in order to prevent immediate, serious, and irreversible damage to a sanctuary resource.

Amend Existing Regulations

Regulations That Would Apply to Both Existing Sanctuary and Proposed Expansion Area

Prohibition on Certain Discharges

The discharge/deposit of graywater, as defined by section 312 of the FWPCA, by vessels less than 300 GRT, or vessels 300 GRT or greater without sufficient holding tank capacity to hold graywater while within the sanctuary would be excepted. This exception is intended to allow small vessels producing a small amount of waste to continue operating within the sanctuary. This exception would not apply to cruise ships, as defined above. This regulation does not currently exist in CBNMS; its promulgation would result in new sanctuary protection measure in both CBNMS as it currently stands as well as in the proposed expanded sanctuary. This new exemption would allow some vessels to discharge clean graywater within the sanctuary (which is currently prohibited) as well as in the proposed expansion area. However, larger vessels greater than 300 GRT that have holding capacity would be prohibited from discharging gray water anywhere in either sanctuary. A description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

This rule would extend to the proposed expansion area for CBNMS a provision that also prohibits the discharge/deposit originating outside the boundary of CBNMS that subsequently would enter the sanctuary and injure a sanctuary resource or quality. This existing regulation would be applied to the expansion area, with the addition of the exception for a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold the graywater while within the Sanctuary, as mentioned above. A

description of the impacts of this regulation can be found in the discussion of the proposed action in the DEIS published concurrently with this proposed rule.

Add New Regulations

Prohibit the Disturbance of Historic Resources

NOAA is proposing to prohibit the disturbance of, or attempts to disturb, a sanctuary historical resource. This modification would add protection to these fragile, finite, and non-renewable resources so they may be studied, and appropriate information may be made available for the benefit of the public. This rule would also prohibit the possession of a sanctuary historical resource, and would provide for comprehensive protection of sanctuary resources by making it illegal to possess historical resources in any geographic location. For example, this rule would make it illegal for anyone to possess an artifact taken from a shipwreck in CBNMS even if the individual is no longer in the sanctuary. While the presence of historical resources on Cordell Bank or in its surrounding waters is not known, such resources could exist. Since the proposed expanded sanctuary would be considerably larger in size, there may be submerged resources requiring protection that have yet to be discovered.

Prohibit Interference With an Investigation

NOAA proposes to add a new regulation to implement an existing statutory prohibition on interfering with, obstructing, delaying, or preventing an investigation, search or seizure in connection with an enforcement action related to the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 et seq.).

Exemption for Authorized Activities

Current CBNMS permit regulations do not allow the authorization of any prohibited activity other than through the issuance of a national marine sanctuary permit.

NOAA is proposing to add to CBNMS regulations the authority to authorize certain activities such as the discharge, construction, drilling, dredging or other disturbance on submerged land outside of the line representing the 50-fathom isobath around Cordell Bank, taking and possessing a marine mammal, sea turtle, or bird, and possessing historical resources, as long as those activities are permitted or licensed by another federal or State agency, and as long as the applicant complies with any terms and conditions deemed necessary to protect sanctuary resources and qualities. In the case of authorization, the activity would have to comply with such terms, but would not have to fit within the categories of activities for which a sanctuary permit may be obtained. The activities would have to be authorized by the Sanctuary Superintendent, with authority delegated from the ONMS Director, under 15 CFR 922.112(d) and 15 CFR 922.49. This authorization provision is similar to that in the existing regulations for MBNMS and five other national marine sanctuaries. The Sanctuary Superintendent may also deny an authorization or condition an approval to protect sanctuary resources.

The exemption for authorized activities in this proposed rule would result in a new

management authority in CBNMS as it currently stands as well as in the proposed expanded sanctuary.

IV. Classification

National Environmental Policy Act

NOAA has prepared a draft environmental impact statement to evaluate the environmental effects of the proposed rulemaking. Copies are available at the address and Web site listed in the ADDRESSES section of this proposed rule. Responses to comments received on this proposed rule will be published in the final environmental impact statement and preamble to the final rule.

Coastal Zone Management Act

Section 307 of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) requires Federal agencies to consult with a state's coastal program on potential Federal regulations having an effect on state waters. NOAA will submit a copy of this proposed rule and supporting documents to the California Coastal Commission for evaluation of Federal consistency under the CZMA.

Executive Order 12866: Regulatory Impact

Under Executive Order 12866, if the proposed regulations are "significant," as defined in section 3(f) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Management and Budget. This proposed rule has been determined to be not significant within the meaning of Executive Order 12866.

Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

Executive Order 13175: Tribal Consultation and Collaboration

Representatives from the Manchester Band of Pomo Indians, Kashia Band of Pomo Indians of Stewarts Point Rancheria, and Federated Indians of Graton Rancheria were invited in writing to consult with NOAA under Executive Order 13175. As of publication date of this notice of proposed rulemaking, NOAA has not received answers to the consultation letters. However, NOAA will continue to seek their participation in the development of this rulemaking.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce 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 factual basis for this certification is as follows:

The Small Business Administration has established thresholds on the designation of businesses as "small entities". A fish-harvesting business is considered a small business if has annual receipts not in excess of \$3.5 million (13 CFR 121.201). Sports and

recreation businesses and scenic and sightseeing transportation businesses are considered small businesses if they have annual receipts not in excess of \$6 million (13 CFR 121.201). According to these limits, each of the businesses potentially affected by the proposed rule, except those in the oil and gas and commercial marine transportation businesses would most likely be small businesses.

The analysis presented here is based on limited quantitative information on how much activity occurs within the boundaries of the proposed expansion areas for CBNMS and GFNMS, except for commercial fishing operations.

In 2013, NOAA conducted a study on the economic impact of California's commercial fisheries in all four California national marine sanctuaries, including the expansion area for the CBNMS and GFNMS. NOAA obtained commercial fishing data from the California Department of Fish and Wildlife (CDFW) for years 2000 to 2012. In 2012, there were a little over 200 fishing operations that made some catch from the CBNMS-GFNMS expansion area. These operations had harvest revenue of \$6.55 million (measured in 2013 dollars using the Consumer Price Index, which generated income (including multiplier impacts) of \$5.45 million and 246 full and part-time jobs.

Methodology. Due to the lack of quantitative data on the number of businesses directly affected by the proposed regulations and their levels of revenues, costs and profits from their activities in the CBNMS-GFNMS expansion area, the assessment here is qualitative.

Scales Used for Assessing Impacts. For assessing levels of impacts within an alternative, NOAA used three levels plus "no impacts". The three levels are "negligible", "moderate" and "high."

For levels of impacts within a proposed alternative, negligible means very low benefits, costs, or net benefits (less than 1% change). Moderate impacts would be more than 1% and less than or equal to 10%, and high impacts would be more than 10%. For market economic values (revenue, costs, and profits), negligible would mean no likely impact whereas moderate and high could mean some measurable impact on market economic values at the levels noted above. NOAA analyzed five regulatory alternatives (Proposed Action, No Action, Existing Regulations, Arena Cove Boundary, and Alternative Motorized Personal Watercraft (MPWC) Zones.) User groups that entail small businesses included commercial fishing operation, recreation-tourism related businesses, and land use and development businesses. Other user groups included in the full regulatory impact review and not included here are research and education, people who receive passive economic use value from improvements in natural resource qualities/quantities, businesses in offshore energy (oil and gas industry and alternative energy such as wave and wind energy firms) and those firms involved in marine transportation. Firms involved in offshore energy and marine transportation directly affected by the proposed regulations were judged not to be small businesses.

NOAA assessed three types of regulations included in the proposed action (discharges, submerged lands—seabed alterations, and introduced species), plus the impact of all regulations combined. Oil and gas regulations addressed in the full regulatory impact review are not discussed here since the oil and gas industry is judged not to involve small businesses.

Proposed Action

Discharge Regulations. Under the proposed rule, NOAA would require commercial fishing operations and businesses involved in providing guide services in the recreation-tourism industry (e.g. charter and party boat fishing operations and whale-watching or other wildlife observation or guide businesses) to hold and dispose of wastes prohibited by the regulations from discharge or deposit within the sanctuary until they are outside sanctuary boundaries. NOAA expects negligible costs from these regulations for all these operations. NOAA's proposed exemption for graywater discharges for vessels under 300 gross registered tons (GRT) or over 300 GRT but without sufficient holding tank capacity, would lessen the impact of the regulation in the sanctuary, and therefore would reduce the cost of compliance. NOAA expects both the commercial fishing industry and the recreation-tourism industry to receive moderate net benefits from these regulations in that habitat qualities would improve generating increased fish stocks for commercial and recreational fishing and improvements in the qualities that the recreation-tourism industry depends upon resulting in increased business revenues and profits. Thus, NOAA expects that the commercial fishing and recreation-tourism industries would benefit from the discharge regulations. NOAA expects the proposed action to generate a mid-range level of costs and mid-range levels of costs with a mid-range level of net benefits compared with all other regulatory alternatives. Land use and development businesses would not be directly affected by the discharge regulations.

Submerged lands—Seabed Alteration Regulations. Regulations prohibiting disturbances of the seabed would impact the commercial fishing industry, the recreation-tourism industry, and land use and development industry. NOAA expects all of these industries to receive moderate net benefits from these regulations because of the improvement or maintenance of habitat qualities that these industries depend upon. NOAA also expects businesses in these industries to experience negligible increases in costs of operations. The land use—development industry would be expected to benefit through increased property values. There are many examples in the economics literature showing that property values are enhanced when located near protected areas. Because of the exemptions, permit, and authorization processes in the proposed action, which may allow for some activities that disturb the seabed, costs are less than the alternative of extending existing regulations in the current sanctuaries to the proposed expansion area and would be expected to be in the mid-range of costs across all alternatives.

Introduced Species Regulations. Baiting and processing can be pathways for introduction of invasive species. The proposed action could potentially require commercial and recreational fishing operations to alter their baiting methods to reduce the likelihood for the introduction of invasive species into the proposed sanctuary expansion areas, but this is not likely because no known non-native species are currently being used as bait in these areas. No current operations involving fish processing vessels within the expansion area are known. NOAA expects the proposed action to limit competition between introduced and native species and provide ongoing stability to native populations of harvested species. Thus, NOAA expects these regulations to result in moderate benefits and net benefits to the commercial fishing industry, the recreation-tourism industry and businesses in the land use and development industry as habitat qualities are maintained or improved, while resulting in negligible costs to businesses in the commercial and recreational fishing industry. Again, the businesses in land use and development would benefit through enhanced property values. The proposed action is in the mid-range of benefits, costs and net benefits for the commercial fishing and recreation-tourism industry businesses across all regulatory alternatives, while land use and development would be expected to be in the mid-range of benefits and net benefits and no costs.

All Regulations. NOAA expects the combined effects of all of the regulations in the proposed action to generate moderate benefits and net benefits to businesses in all three industries, while imposing negligible costs. NOAA also expects the proposed action to result in a mid-range of benefits and net benefits to businesses in all three industries, while imposing next to the lowest costs across all regulatory alternatives analyzed in the draft environmental impact statement.

Because the impacts of this proposed rule on commercial fishing, recreational tourism, and land use and development businesses are minimal, the Chief Counsel for Regulation certified to the Chief Counsel for Advocacy at SBA that this rulemaking would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

ONMS has a valid Office of Management and Budget (OMB) control number (0648–0141) for the collection of public information related to the processing of ONMS permits across the National Marine Sanctuary System. NOAA's proposal to expand GFNMS and CBNMS would likely result in an increase in the number of requests for ONMS general permits, special use permits, and authorizations due to the increase in the spatial extent of the applicable regulations for these sanctuaries and the addition of the authority to authorize other valid federal, state, or local leases, permits, licenses, approvals, or other authorizations. An increase in the number of ONMS permit requests would require a change to the reporting burden certified for OMB control

number 0648–0141. An update to this control number for the processing of ONMS permits would be requested as part of the final rule for sanctuary expansion.

Send comments regarding the burden estimate for this data collection requirement, or any other aspect of this data collection, including suggestions for reducing the burden, to NOAA (see **ADDRESSES**) and by email to OIRA_submission@omb.eop.gov, or fax to (202) 395–7285. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

V. Request for Comments

NOAA requests comments on this proposed rule by June 30, 2014.

VI. References

A complete list of all references cited herein is available upon request (see **ADDRESSES** section).

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Historic preservation, Intergovernmental relations, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife.

Dated: April 4, 2014.

Holly A. Bamford,

Assistant Administrator, for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons discussed in the preamble, the National Oceanic and Atmospheric Administration proposes to amend 15 CFR part 922 as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

■ 2. Amend § 922.49 by revising paragraphs (a), (b), and (c) to read as follows:

§ 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by subpart H, subparts K through P, or subpart R, if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine

Sanctuary after the effective date of the regulations in subpart P, provided that:

* * * * *

(b) Any potential applicant for an authorization described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which an application is intended to be made is prohibited by subpart H, subparts K through P, or subpart R, as appropriate.

(c) Notification of filings of applications should be sent to the Director, Office of Ocean and Coastal Resource Management at the address specified in subpart H, subparts K through P, or subpart R, as appropriate. A copy of the application must accompany the notification.

* * * * *

■ 3. Revise part 922 Subpart H to read as follows:

Subpart H—Gulf of the Farallones National Marine Sanctuary

§ 922.80 Boundary.

(a) Gulf of the Farallones National Marine Sanctuary (Sanctuary) encompasses an area of approximately 2,490 square nautical miles (3,297 square miles) of coastal and ocean waters, and submerged lands thereunder, surrounding the Farallon Islands and Noonday Rock along the northern coast of California. The precise boundary coordinates are listed in Appendix A to this subpart.

(b) The western boundary of the Sanctuary extends south from Point 1 approximately 45 nautical miles (52 miles) to Point 2, which is the northwestern corner of Cordell Bank National Marine Sanctuary (CBNMS). The Sanctuary boundary then extends from Point 2 approximately 38 nautical miles (43 miles) east along the northern boundary of CBNMS to Point 3, which is approximately 7 nautical miles (8 miles) west of Bodega Head. From Point 3 the Sanctuary boundary continues to south and west to Points 4 through Point 19 (in numerical sequence) and is coterminous with the eastern boundary of CBNMS. From Point 19 the Sanctuary boundary continues south and east to Points 20 through 25 (in numerical sequence) until it intersects the boundary for Monterey Bay National Marine Sanctuary (MBNMS) at Point 26. From Point 26 the Sanctuary boundary extends eastward and northward, coterminous with MBNMS, to Points 27 through 33 (in numerical sequence). From Point 33 the boundary proceeds along a straight line arc towards Point 34 until it intersects the Mean High Water Line at Rocky Point, California. From this intersection the Sanctuary

boundary follows the Mean High Water Line northward until it intersects the boundary for Point Reyes National Seashore approximately 0.7 nautical miles (0.8 miles) south and east of Bolinas Point in Marin County, California. The Sanctuary boundary then approximates the boundary for Point Reyes National Seashore, as established at the time of designation of the Sanctuary, to the intersection of the Point Reyes National Seashore boundary and the Mean High Water Line approximately 0.13 nautical miles (0.15 miles) south and east of Duck Cove in Tomales Bay. The Sanctuary boundary then follows the Mean High Water Line along Tomales Bay and Giacomini Wetland and up Lagunitas Creek to the U.S. Highway 1 Bridge. Here the Sanctuary boundary crosses Lagunitas Creek and follows the Mean High Water Line north to the Estero de San Antonio and up the Estero to the tide gate at Valley Ford-Franklin School Road. Here the Sanctuary boundary crosses the Estero de San Antonio and proceeds west and north following the Mean High Water Line to the Estero Americano and up the Estero to the bridge at Valley Ford-Estero Road. Here the Sanctuary boundary crosses the Estero Americano and proceeds west and north following the Mean High Water Line to the Salmon Creek Estuary. At the Salmon Creek Estuary the boundary continues along the Mean High Water Line of the southern shore of the Salmon Creek Estuary until it intersects a straight line arc connecting Point 35 and Point 36. At that intersection the boundary extends across the estuary towards Point 36 until it intersects the Mean High Water Line of the northern shore of the Salmon Creek Estuary. From this intersection the boundary follows the Mean High Water Line to the Russian River. At the Russian River the boundary continues along the Mean High Water Line of the southern shore of the Russian River until it intersects a straight line arc connecting Point 37 and Point 38. At that intersection the boundary extends across the river towards Point 38 until it intersects the Mean High Water Line of the northern shore of the Russian River. From this intersection the boundary follows the Mean High Water Line to the Gualala River. At the Gualala River the boundary continues along the Mean High Water Line of the southern shore of the Gualala River until it intersects a straight line arc between Point 39 and Point 40. At that intersection the boundary extends across the river towards Point 40 until it intersects the Mean High Water Line of the northern shore of the Gualala

River. From this intersection the boundary follows the Mean High Water Line to Arena Cove in Mendocino County. At Arena Cove the boundary continues along the Mean High Water Line of the southern shore of Arena Cove until it intersects a straight line arc connecting Point 41 and Point 42. At that intersection the boundary extends across the cove towards Point 42 until it intersects the Mean High Water Line of the northern shore of Arena Cove. From this intersection the boundary follows the Mean High Water Line north to the Garcia River. At the Garcia River the boundary continues along the Mean High Water Line of the southern shore of the Garcia River until it intersects a straight line arc connecting Point 43 and Point 44. At that intersection the boundary extends across the river towards Point 44 until it intersects the Mean High Water Line of the northern shore of the Garcia River. The Sanctuary boundary then continues to follow the Mean High Water Line until it intersects the rhumb line connecting Point 45 at Manchester Beach in Mendocino County, California and Point 46. From this intersection the Sanctuary boundary continues west along its northernmost extent to Point 46. The Sanctuary includes Bolinas Lagoon, Estero de San Antonio (to the tide gate at Valley Ford-Franklin School Road) and Estero Americano (to the bridge at Valley Ford-Estero Road), as well as Bodega Bay, but does not include Bodega Harbor, the Salmon Creek Estuary, the Russian River Estuary, the Gualala River Estuary, the portion of Arena Cove from the end of the pier eastward, or the Garcia River Estuary. Unless otherwise specified, where the Sanctuary boundary crosses a waterway, the Sanctuary excludes this waterway.

§ 922.81 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

Attract or attracting means the conduct of any activity that lures or may lure any animal in the Sanctuary by using food, bait, chum, dyes, decoys (e.g., surfboards or body boards used as decoys), acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).

Clean means not containing detectable levels of harmful matter.

Cruise ship means a vessel with 250 or more passenger berths for hire.

Deserting means leaving a vessel aground or adrift without notification to the Director of the vessel going aground or becoming adrift within 12 hours of its discovery and developing and

presenting to the Director a preliminary salvage plan within 24 hours of such notification, after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts, or when the owner/operator cannot after reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities; or leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: Fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4.

Introduced species means any species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Motorized personal watercraft means any vessel, propelled by machinery, that is designed to be operated by standing, sitting, or kneeling on, astride, or behind the vessel, in contrast to the conventional manner, where the operator stands or sits inside the vessel; any vessel less than 20 feet in length overall as manufactured and propelled by machinery and that has been exempted from compliance with the U.S. Coast Guard's Maximum Capacities Marking for Load Capacity regulation found at 33 CFR Parts 181 and 183, except submarines; or any other vessel that is less than 20 feet in length overall as manufactured, and is propelled by a water jet pump or drive.

Routine maintenance means customary and standard procedures for maintaining docks or piers.

Seagrass means any species of marine angiosperms (flowering plants) that inhabit portions of the submerged lands in the Sanctuary. Those species include, but are not limited to: *Zostera asiatica* and *Zostera marina*.

Special Wildlife Protection Zones are areas of high biological diversity and/or abundance of species that are susceptible to disturbance, including

federally listed and specially protected species. In particular these areas are white shark, seabird and marine mammal (pinniped) "hotspots". White shark "hotspots" are where there are globally significant concentrations of white sharks. Seabird "hotspots" are areas with important populations, species diversity, and which support high concentration of nesting and roosting birds. Pinniped "hotspots" provided vital habitat for pupping seals and sea lions. Special Wildlife Protection Zones are established where "hotspots" are susceptible to disturbance and their coordinates are found in Appendix D of this Subpart.

§ 922.82 Prohibited or otherwise regulated activities.

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Exploring for, developing, or producing oil, gas or minerals.

(2) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

(i) Fish, fish parts, chumming materials or bait used in or resulting from lawful fishing activities within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the Sanctuary;

(ii) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated incidental to vessel use by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) that is approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(iii) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash;

(iv) For a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold the graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA; or

(v) Vessel engine or generator exhaust.

(3) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling

water, vessel engine or generator exhaust, clean bilge water, or anchor wash.

(4) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except for the exclusions listed in paragraphs (a)(2)(i) through (v) and (a)(3) of this section.

(5) Constructing any structure other than a navigation aid on or in the submerged lands of the Sanctuary; placing or abandoning any structure on or in the submerged lands of the Sanctuary; or drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary in any way, except:

(i) By anchoring vessels (in a manner not otherwise prohibited by this part (see § 922.82(a)(16)));

(ii) While conducting lawful fishing activities;

(iii) Routine maintenance and construction of docks and piers on Tomales Bay; or

(iv) Mariculture activities conducted pursuant to a valid lease, permit, license or other authorization issued by the State of California.

(6) Operating motorized personal watercraft (MPWC), except for:

(i) Emergency search and rescue missions or law enforcement operations (other than routine training activities) carried out by the National Park Service, U.S. Coast Guard, Fire or Police Departments or other Federal, State or local jurisdictions; or

(ii) An MPWC equipped with an operable Global Positional System (GPS) unit in working condition within the four designated zones within the Sanctuary described in Appendix C to this subpart.

(7) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act (ESA), as amended, 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from), any marine mammal, sea turtle, or bird taken, except as authorized by the MMPA, ESA, MBTA, by any regulation, as amended, promulgated under the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.

(9) Possessing, moving, removing, or injuring, or attempting to possess, move,

remove or injure, a Sanctuary historical resource.

(10) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except:

(i) Striped bass (*Morone saxatilis*) released during catch and release fishing activity; or

(ii) Species cultivated by mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California and in effect on the effective date of the final regulation.

(11) Disturbing marine mammals or seabirds by flying motorized aircraft at less than 1,000 feet over the waters within the seven designated Special Wildlife Protection Zones described in Appendix D to this subpart, except transiting Zone 6 to transport authorized persons or supplies to or from Southeast Farallon Island or for enforcement purposes. Failure to maintain a minimum altitude of 1,000 feet above ground level over such waters is presumed to disturb marine mammals or seabirds.

(12) Operating any vessel engaged in the trade of carrying cargo within an area extending 1 nautical mile from a designated Special Wildlife Protection Zone described in Appendix D to this subpart. This includes but is not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations, except to transport persons or supplies to or from the Islands or mainland areas adjacent to Sanctuary waters. In no event shall this section be construed to limit access for fishing, recreational or research vessels.

(13) Attracting a white shark anywhere in the Sanctuary; or approaching within 50 meters of any white shark within the line approximating 1 nautical mile around Special Wildlife Protection Zone 6 and 7 described in Appendix D.

(14) Deserting a vessel aground, at anchor, or adrift in the Sanctuary.

(15) Leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary.

(16) Anchoring a vessel in a designated seagrass protection zone in Tomales Bay, except as necessary for mariculture operations conducted pursuant to a valid lease, permit or license. The coordinates for the no-anchoring seagrass protection zones are listed in Appendix B to this subpart.

(17) Interfering with, obstructing, delaying, or preventing an investigation, search, seizure, or disposition of seized property in connection with

enforcement of the Act or any regulation or permit issued under the Act.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities shall be determined in consultation between the Director and the Department of Defense.

(c) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property, or the environment.

(d) The prohibitions in paragraphs (a)(2) through (9) and (a)(11) through (16) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to 15 CFR 922.48 and 922.83 or a Special Use permit issued pursuant to section 310 of the Act.

(e) The prohibitions in paragraphs (a)(2) through (9) and (10), for the introduction of a introduced species from shellfish mariculture in state waters determined to be non-invasive, of this section do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation or expansion and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with 15 CFR 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals, and extensions of authorizations in existence on the effective date of designation or expansion constitute authorizations issued after the effective date of Sanctuary designation or expansion.

§ 922.83 Permit procedures and issuance criteria.

(a) A person may conduct an activity prohibited by § 922.82(a)(2) through (9) and (a)(11) through (16) if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under § 922.48 and this section.

(b) The Director, at his or her discretion, may issue a National Marine Sanctuary permit under this section, subject to terms and conditions as he or she deems appropriate, if the Director finds that the activity will:

(1) Further research or monitoring related to Sanctuary resources and qualities;

(2) Further the educational value of the Sanctuary;

(3) Further salvage or recovery operations; or

(4) Assist in managing the Sanctuary.

(c) In deciding whether to issue a permit, the Director shall consider factors such as:

(1) The applicant is qualified to conduct and complete the proposed activity;

(2) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(3) The methods and procedures proposed by the applicant are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;

(4) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(5) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;

(6) It is necessary to conduct the proposed activity within the Sanctuary;

(7) The reasonably expected end value of the proposed activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and

(8) Any other factors as the Director deems appropriate.

(d) *Applications.* (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Gulf of the Farallones National Marine Sanctuary, 991 Marine Dr., The Presidio, San Francisco, CA 94129.

(2) In addition to the information listed in § 922.48(b), all applications must include information to be considered by the Director in paragraph (b) and (c) of this section.

(e) The permittee must agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

§ 922.84 Certification of other permits.

A permit, license, or other authorization allowing activities prohibited by sanctuary regulations, occurring prior to the effective date of sanctuary expansion and within the sanctuary expansion area, must be certified by the Director as consistent with the purpose of the Sanctuary and having no significant effect on Sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency. In considering whether to make the certifications called for in this section, the Director may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate. Any request for certification called for in this section must be received by the Director within 60 days of the effective date of sanctuary expansion. The Director may amend, suspend, or revoke any certification made under this section whenever continued operation would violate any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit, license, or other authorization and the issuing agency and shall set forth reason(s) for the action taken.

Appendix A to Subpart H of Part 922—Gulf of the Farallones National Marine Sanctuary Boundary Coordinates

Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Point ID No.	Latitude	Longitude
1	39.00000	- 124.33350
2	38.29989	- 123.99988
3	38.29989	- 123.20005
4	38.26390	- 123.18138
5	38.21001	- 123.11913
6	38.16576	- 123.09207
7	38.14072	- 123.08237
8	38.12829	- 123.08742
9	38.10215	- 123.09804
10	38.09069	- 123.10387
11	38.07898	- 123.10924
12	38.06505	- 123.11711
13	38.05202	- 123.12827
14	37.99227	- 123.14137
15	37.98947	- 123.23615
16	37.95880	- 123.32312
17	37.90464	- 123.38958
18	37.83480	- 123.42579
19	37.76687	- 123.42694
20	37.75932	- 123.42686
21	37.68892	- 123.39274
22	37.63356	- 123.32819
23	37.60123	- 123.24292
24	37.59165	- 123.22641
25	37.56305	- 123.19859
26	37.52001	- 123.12879
27	37.50819	- 123.09617

Point ID No.	Latitude	Longitude
28	37.49418	-123.00770
29	37.50948	-122.90614
30	37.52988	-122.85988
31	37.57147	-122.80399
32	37.61622	-122.76937
33	37.66641	-122.75105
34	37.88225	-122.62753
35	38.35055	-123.06659
36	38.35559	-123.06663
37	38.44575	-123.12602
38	38.45531	-123.13469
39	38.76231	-123.52957
40	38.76899	-123.53398
41	38.91172	-123.71152
42	38.91632	-123.71152
43	38.95404	-123.73405
44	38.96149	-123.71914
45	39.00000	-123.69710
46	39.00000	-124.33350

**Appendix B to Subpart H of Part 922—
No-Anchoring Seagrass Protection
Zones in Tomales Bay**

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

ZONE 1: Zone 1 is an area of approximately .11 square nautical miles (.15 square miles) offshore south of Millerton Point. The eastern boundary is a straight line arc that connects points 1 and 2 listed in the coordinate table below. The southern boundary is a straight line arc that connects points 2 and 3, the western boundary is a straight line arc that connects points 3 and 4 and the northern boundary is a straight line arc that connects point 4 to point 5. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 1 Point ID	Latitude	Longitude
1	38.10571	-122.84565
2	38.09888	-122.83603
3	38.09878	-122.84431
4	38.10514	-122.84904
5	38.10571	-122.84565

ZONE 2: Zone 2 is an area of approximately .15 square nautical miles (.19 square miles) that begins just south of Marconi and extends approximately 1.6 nautical miles (1.9 miles) south along the eastern shore of Tomales Bay. The western boundary is a series of straight line arcs that connect point 1 to point 5 listed in the coordinate table below. The southern boundary is a straight line arc that extends from point 5 towards point 6 until it intersects the Mean High Water Line. From this intersection the eastern boundary follows the Mean High Water Line north until it intersects the straight line arc that connects point 7 to point 8. From this intersection the northern boundary extends to point 8. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 2 Point ID	Latitude	Longitude
1	38.13326	-122.87178
2	38.12724	-122.86488
3	38.12563	-122.86480
4	38.11899	-122.86731
5	38.11386	-122.85851
6	38.11608	-122.85813
7	38.14078	-122.87433
8	38.13326	122.87178

ZONE 3: Zone 3 is an area of approximately .01 square nautical miles (.02 square miles) that begins just south of Marshall and extends approximately .5 nautical miles (.6 miles) south along the eastern shore of Tomales Bay. The western boundary is a straight line arc that connects point 1 to point 2 listed in the coordinate table below. The southern boundary is a straight line arc that extends from point 2 towards point 3 until it intersects the Mean High Water Line. From this intersection the eastern boundary follows the Mean High Water Line northward until it intersects the straight line arc that connects point 4 to point 5. From this intersection the northern boundary extends westward along the straight line arc that connects point 4 to point 5. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 3 Point ID	Latitude	Longitude
1	38.15956	-122.89573
2	38.15250	-122.89042
3	38.15292	-122.88984
4	38.16038	-122.89566
5	38.15956	-122.89573

ZONE 4: Zone 4 is an area of approximately .18 square nautical miles (.21 square miles) that begins just north of Nicks Cove and extends approximately 2.7 nautical miles (3.1 miles) south along the eastern shore of Tomales Bay to just south of Cypress Grove. The western boundary is a series of straight line arcs that connect point 1 to point 8 listed in the coordinate table below. The southern boundary is a straight line arc that extends from point 8 towards point 9 until it intersects the Mean High Water Line. From this intersection the eastern boundary follows the Mean High Water Line north until it intersects the straight line arc that connects point-10 to point 11. From this intersection the northern boundary extends westward along the straight line arc that connects point 10 to point 11. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 4 Point ID	Latitude	Longitude
1	38.20004	-122.92315
2	38.18881	-122.91740
3	38.18651	-122.91404
4	38.17919	-122.91021
5	38.17450	-122.90545
6	38.16869	-122.90475
7	38.16535	-122.90308

Zone 4 Point ID	Latitude	Longitude
8	38.16227	-122.89650
9	38.16266	-122.89620
10	38.20080	-122.92174
11	38.20004	-122.92315

ZONE 5: Zone 5 is an area of approximately 1.3 square nautical miles (1.6 square miles) that begins east of Lawsons Landing and extends approximately 2.7 nautical miles (3.1 miles) east and south along the eastern shore of Tomales Bay but excludes areas adjacent (approximately .32 nautical miles or .37 miles) to the mouth of Walker Creek. The eastern boundary is a series of straight line arcs that connect point 1 to point 3 listed in the coordinate table below. From point 3 the southern boundary trends eastward along the straight line arc that connects point 3 to point 4 until it intersects the Mean High Water Line. From this intersection the boundary follows the Mean High Water Line northward until it intersects the straight line arc that connects point 5 to point 6. From this intersection the boundary extends westward along the straight line arc that connects point 5 to point 6. From point 6 the boundary follows the straight line arc that connects point 6 to point 7, and then extends along the straight line arc that connects point 7 to point 8 until it again intersects the Mean High Water Line. From this intersection the boundary follows the Mean High Water Line until it intersects the straight line arc that connects point 9 to point 10. From this intersection the boundary extends to point 10 along the straight line arc that connects point 9 to point 10. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 5 Point ID	Latitude	Longitude
1	38.21825	-122.96041
2	38.20666	-122.94397
3	38.19431	-122.93431
4	38.20080	-122.92174
5	38.20522	-122.92446
6	38.20366	-122.93246
7	38.20938	-122.94153
8	38.21106	-122.93742
9	38.23129	-122.96293
10	38.21825	-122.96041

ZONE 6: Zone 6 is an area of approximately .01 square nautical miles (.02 square miles) in the vicinity of Indian Beach along the western shore of Tomales Bay. The eastern boundary is a straight line arc that connects point 1 to point 2 listed in the coordinate table below. The southern boundary extends westward along the straight line arc that connects point 2 to point 3 until it intersects the Mean High Water Line. From this intersection the eastern boundary follows the Mean High Water Line northward until it intersects the straight line arc that connects point 3 to point 4. From this intersection the northern boundary extends eastward along the straight line arc that connects point 4 to point 5. All coordinates are in the Geographic Coordinate

System relative to the North American Datum of 1983.

Zone 6 Point ID	Latitude	Longitude
1	38.14103	- 122.89537
2	38.13919	- 122.89391
3	38.13804	- 122.89610
4	38.14033	- 122.89683
5	38.14103	- 122.89537

Zone 7: Zone 7 is an area of approximately .09 square nautical miles (.12 square miles) that begins just south of Pebble Beach and extends approximately 1.6 nautical miles (1.9 miles) south along the western shore of Tomales Bay. The eastern boundary is a series of straight line arcs that connect point 1 to point 5 listed in the coordinate table below. The southern boundary extends along the straight line arc that connects point 5 to point 6 until it intersect the Mean High Water Line. From this intersection the western boundary extends north along the Mean High Water Line until it intersects the straight line arc that connects point 7 to point 8. From this intersection the northern boundary extends eastward along the straight line arc that connects point 7 to point 8. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 7 Point ID	Latitude	Longitude
1	38.13067	- 122.88620
2	38.12362	- 122.87984
3	38.11916	- 122.87491
4	38.11486	- 122.86896
5	38.11096	- 122.86468
6	38.11027	- 122.86551
7	38.13001	- 122.88749
8	38.13067	- 122.88620

**Appendix C to Subpart H of Part 922—
Motorized Personal Watercraft Zones
and Access Routes Within the
Sanctuary**

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

The four zones and access routes are:

(1) Motorized Personal Watercraft Zone 1 (MPWCZ 1) encompasses an area of approximately 6.4 square nautical miles (8.5 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of MPWCZ 1 extends due south along a meridian from Point 1, west of Manchester Beach in Mendocino County, to Point 2, which is west of Arena Cove. The boundary then follows a rhumb line east from Point 2 towards Point 3 until it intersects the Mean High Water Line at the south end of Arena Cove. From this intersection, the boundary follows the Mean High Water Line until it intersects the straight line arc that connects Point 4 and Point 5. The boundary extends across Arena Cove along this arc until it intersects the Mean High Water Line on the north side of Arena Cove. The boundary then follows the Mean High Water Line until it

intersects the rhumb line that connects Point 6 and Point 7. From this intersection, the boundary extends due west to Point 7. From Point 7 the boundary extends due north along the meridian that connects Point 7 and Point 8 until it intersects the Mean High Water Line on the north side of Point Arena. From this intersection the boundary again follows the Mean High Water Line until it intersects the rhumb line connecting Point 9 and Point 10. The boundary then turns seaward and extends due west to Point 10.

Zone 1 is bounded by:

Zone 1 Point ID No.	Latitude	Longitude
1	39.00000	- 123.75000
2	38.91024	- 123.75000
3	38.91024	- 123.71146
4	38.91172	- 123.71152
5	38.91632	- 123.71152
6	38.91790	- 123.72626
7	38.91790	- 123.74166
8	38.95554	- 123.74166
9	39.00000	- 123.69450
10	39.00000	- 123.75000

(2) Motorized Personal Watercraft Zone 2 (MPWCZ 2) encompasses an area of approximately 19.8 square nautical miles (26.2 square miles). The precise boundary coordinates are listed in the table following this description. The southern boundary of MPWCZ 2 extends due east along a rhumb line that connects Point 1, south of Arena Cove, to Point 2, just offshore of Haven's Neck in Mendocino County. From Point 2 the boundary trends north and west, generally parallel to the shoreline, and extends, in sequence, to Point 3 off Iversen Point, then to Point 4 off Saunders Landing, and then to Point 5 off Moat. From Point 5 the boundary follows the straight line arc that connects Point 5 and Point 6 until it intersects the Mean High Water Line at the south end of Arena Cove. From this intersection, the boundary follows the Mean High Water Line until it intersects the straight line arc that connects Point 7 and Point 8. The boundary extends across Arena Cove towards Point 8 until it intersects the Mean High Water Line on the north side of Arena Cove. The boundary then follows the Mean High Water Line until it intersects the meridian that connects Point 9 and Point 10. The boundary then extends due south to Point 10.

Zone 2 is bounded by:

Zone 2 Point ID No.	Latitude	Longitude
1	38.80856	- 123.72378
2	38.80856	- 123.60351
3	38.84514	- 123.64738
4	38.85202	- 123.65113
5	38.88255	- 123.68162
6	38.91033	- 123.71114
7	38.91172	- 123.71152
8	38.91632	- 123.71152
9	38.91790	- 123.72626

(3) Motorized Personal Watercraft Zone 3 (MPWCZ 3) encompasses an area of

approximately 2.9 square nautical miles (3.8 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of MPWCZ 3 extends due south along a meridian from Point 1, west of Timber Cove in Sonoma County, to Point 2, which is west of Fort Ross Reef. The boundary then turns east and follows a rhumb line from Point 2 to Point 3. From Point 3 the boundary turns due north and follows the meridian from Point 3 towards Point 4 until it intersects the Mean High Water Line at the south end of Timber Cove. From the south end of Timber Cove the boundary follows the Mean High Water Line until it intersects the rhumb line that connects Point 5 and Point 6. From this intersection the boundary extends due west to Point 6.

Zone 3 is bounded by:

Zone 3 Point ID No.	Latitude	Longitude
1	38.53150	- 123.30000
2	38.50000	- 123.30000
3	38.50000	- 123.26896
4	38.52519	- 123.26896
5	38.53150	- 123.27853
6	38.53150	- 123.30000

(4) Motorized Personal Watercraft Zone 4 (MPWCZ 4) encompasses an area of approximately 4.6 square nautical miles (6.1 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of MPWCZ 4 extends due south from Point 1, off Coleman Beach in Sonoma County, to Point 2, which is east of Bodega Head. From Point 2 the boundary extends due east along a rhumb line to Point 3. The boundary continues from Point 3 though Point 10 inclusive, in numerical sequence, to form an access route that connects to the entrance to Bodega Harbor. From Point 10 the boundary extends due north along the meridian that connects Point 10 and Point 11. At Point 11 the boundary turns west and follows a rhumb line to Point 12. At Point 12 the boundary turns due north and follows the meridian from Point 12 to Point 13. From Point 13 the boundary extends due east along a rhumb line that connects Point 13 and Point 14, until it intersects the Mean High Water Line at South Salmon Creek Beach. At this intersection the boundary turns northward and follows the Mean High Water Line until it intersects the rhumb line that connects Point 15 and Point 16. From this intersection the boundary extends due west to Point 16.

Zone 4 is bounded by:

Zone 4 Point ID No.	Latitude	Longitude
1	38.36615	- 123.10000
2	38.29800	- 123.10000
3	38.29800	- 123.07374
4	38.27972	- 123.07374
5	38.28542	- 123.03204
6	38.30574	- 123.04784
7	38.30574	- 123.04987
8	38.28619	- 123.03437
9	38.28142	- 123.07182

Zone 4 Point ID No.	Latitude	Longitude
10	38.29800	-123.07182
11	38.31278	-123.07182
12	38.31278	-123.07824
13	38.33200	-123.07824
14	38.33200	-123.06928
15	38.36615	-123.07186
16	38.36615	-123.10000

**Appendix D to Subpart H of Part 922—
Special Wildlife Protection Zones
Within the Sanctuary**

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

(1) Special Wildlife Protection Zone 1 (SWPZ 1) encompasses an area of approximately 7.9 square nautical miles (10.5 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 1 extends south from Point 1, west of Haven’s Neck in Mendocino County, to Point 2, west of Del Mar Point. The boundary then extends east from Point 2 along a rhumb line connecting Point 2 and Point 3 until it intersects the Mean High Water Line at Del Mar Point. The SWPZ 1 boundary then turns north to follow the Mean High Water Line towards Haven’s Neck and continues until it intersects a rhumb line connecting Point 4 and Point 5. From this intersection the Sanctuary boundary continues west along its northernmost extent to Point 5.

Zone 1 Point ID No.	Latitude	Longitude
1	38.80865	-123.63227
2	38.74096	-123.54306
3	38.74096	-123.51051
4	38.80865	-123.60195
5	38.80865	-123.63227

(2) Special Wildlife Protection Zone 2 (SWPZ 2) encompasses an area of approximately 16.2 square nautical miles (21.4 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 2 extends south and east from Point 1, south of Windermere Point in Sonoma County, to Point 2 and then to Point 3 in sequence. Point 3 is west of Duncans Point in Sonoma County. The boundary then extends east from Point 3 along a rhumb line connecting Point 3 and Point 4 until it intersects the Mean High Water Line at Duncans Point. The boundary then turns north to follow the Mean High Water Line towards Windermere Point until it intersects a meridian connecting Point 5 and Point 6. From this intersection the boundary continues due south along a meridian to Point 6.

Zone 2 Point ID No.	Latitude	Longitude
1	38.49854	-123.26804

Zone 2 Point ID No.	Latitude	Longitude
2	38.45095	-123.18564
3	38.39311	-123.12068
4	38.39311	-123.09527
5	38.52487	-123.26804
6	38.49854	-123.26804

(3) Special Wildlife Protection Zone 3 (SWPZ 3) encompasses an area of approximately 7 square nautical miles (9.3 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 3 extends south and east from Point 1, southwest of the Estero de San Antonio in Sonoma County, to Point 2, south of Tomales Point in Marin County. The boundary then extends north and east from Point 2 along a straight line arc connecting Point 2 and Point 3 until it intersects the boundary of the Point Reyes National Seashore. From this intersection the boundary follows the Point Reyes National Seashore boundary around Tomales Point into Tomales Bay and continues until it again intersects the straight line arc that connects Point 2 and Point 3. From this intersection the boundary follows the straight line arc north and east until it intersects the Mean High Water Line at Toms Point in Tomales Bay. The SWPZ 3 boundary then follows the Mean High Water Line northward towards the Estero de San Antonio until it intersects the straight line arc that connects Point 4 and Point 5. From this intersection the Sanctuary boundary continues south and west to Point 5.

Zone 3 Point ID No.	Latitude	Longitude
1	38.24001	-123.02963
2	38.19249	-122.99523
3	38.21544	-122.95286
4	38.27011	-122.97840
5	38.24001	-123.02963

(4) Special Wildlife Protection Zone 4 (SWPZ 4) encompasses an area of approximately 10.2 square nautical miles (13.5 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 4 extends south and west from Point 1, west of Point Reyes in Marin County, to Point 2, south and west of Point Reyes Lighthouse. The boundary then follows a straight line arc east and south from Point 2 to Point 3. From Point 3 the boundary follows a straight line arc north to Point 4. From Point 4 the SWPZ 4 boundary proceeds west along the straight line arc that connects Point 4 and Point 5 until it intersects the Point Reyes National Seashore boundary north of Chimney Rock. The boundary then follows the Point Reyes National Seashore boundary around Point Reyes until it intersects the straight line arc that connects Point 4 and Point 5 north of the Point Reyes Lighthouse. From this intersection the boundary turns seaward and continues west to Point 5.

Zone 4 Point ID No.	Latitude	Longitude
1	38.01475	-123.05013
2	37.97536	-123.05482
3	37.96521	-122.93771
4	38.00555	-122.93504
5	38.01475	-123.05013

(5) Special Wildlife Protection Zone 5 (SWPZ 5) encompasses an area of approximately 14.8 square nautical miles (19.6 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 5 extends south and east from Point 1, near Millers Point in Marin County, to Point 2, which is south and west of Bolinas Point. The boundary then follows a rhumb line east from Point 2 towards Point 3 until it intersects the Mean High Water Line at Rocky Point. From this intersection, the boundary follows the Mean High Water Line north to Bolinas Point and Millers Point, respectively, including Bolinas Lagoon but not including Seadrift Lagoon, until it intersects the straight line arc that connects Point 4 and Point 5. From this intersection the boundary turns seaward and continues to west and south along the straight line arc to Point 5.

Zone 5 Point ID No.	Latitude	Longitude
1	37.96579	-122.83284
2	37.88195	-122.73989
3	37.88195	-122.62873
4	37.98554	-122.81172
5	37.96579	-122.83284

(6) Special Wildlife Protection Zone 6 (SWPZ 6) encompasses an area of approximately 6.8 square nautical miles (9 square miles). The precise boundary coordinates are listed in the table following this description. The boundary of SWPZ 6 extends south and west from Point 1, north of Southeast Farallon Island, along a straight line arc to Point 2, then south and east along a straight line arc to Point 3, then north and east along a straight line arc to Point 4, then north and west along a straight line arc to Point 5.

Zone 6 Point ID No.	Latitude	Longitude
1	37.72976	-123.00961
2	37.69697	-123.04374
3	37.66944	-123.00176
4	37.70246	-122.96608
5	37.72976	-123.00961

(7) Special Wildlife Protection Zone 7 (SWPZ 7) encompasses an area of approximately 6 square nautical miles (7.9 square miles). The precise boundary coordinates are listed in the table following this description. The boundary of SWPZ 7 extends south and west from Point 1, north of North Farallon Island, along a straight line arc to Point 2, then south and east along a

straight line arc to Point 3, then north and east along a straight line arc to Point 4, then north and west along a straight line arc to Point 5.

Zone 7 Point ID No.	Latitude	Longitude
1	37.79568	- 123.10845
2	37.76746	- 123.13285
3	37.73947	- 123.09341
4	37.76687	- 123.06330
5	37.79568	- 123.10845

■ 4. Revise part 922 Subpart K to read as follows:

Subpart K—Cordell Bank National Marine Sanctuary

§ 922.110 Boundary.

The Cordell Bank National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 971 square nautical miles (1,286 square miles) of offshore ocean waters, and submerged lands thereunder, surrounding the submarine plateau known as Cordell Bank along—the northern coast of California, approximately 45 nautical miles west-northwest of San Francisco, California. The precise boundary coordinates are listed in Appendix A to this subpart. The northern boundary of the Sanctuary is a rhumb line that begins approximately 6 nautical miles (8 miles) west of Bodega Head in Sonoma County, California at Point 1 and extends west approximately 38 nautical miles (44 miles) to Point 2. This line is part of a shared boundary between the Sanctuary and Gulf of the Farallones National Marine Sanctuary (GFNMS). The western boundary of the Sanctuary extends south from Point 2 approximately 34 nautical miles (39 miles) to Point 3. From Point 3 the Sanctuary boundary continues east 15 nautical miles (17 miles) to Point 4 where it intersects the GFNMS boundary again. The line from Point 3 to Point 4 forms the southernmost boundary of the Sanctuary. The eastern boundary of the Sanctuary is a series of straight lines connecting Points 4 through 20 in numerical sequence. The Sanctuary is coterminous with GFNMS along both its (the Sanctuary's) eastern and northern boundaries.

§ 922.111 Definitions.

In addition to the definitions found in § 922.3, the following definitions apply to this subpart:

Clean means not containing detectable levels of harmful matter.

Cruise ship means a vessel with 250 or more passenger berths for hire.

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C.

Introduced species means any species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

§ 922.112 Prohibited or otherwise regulated activities.

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Exploring for, developing, or producing oil, gas, or minerals.

(2)(i) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

(A) Fish, fish parts, chumming materials, or bait used in or resulting from lawful fishing activities within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the Sanctuary;

(B) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated incidental to vessel use and generated by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash;

(D) For a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA; or

(E) Vessel engine or generator exhaust.

(ii) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge water, or anchor wash.

(iii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except as listed in paragraphs (a)(2)(i) and (a)(2)(ii) of this section.

(3) On or within the line representing the 50-fathom isobath surrounding Cordell Bank, removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank. This prohibition does not apply to use of bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States). The coordinates for the line representing the 50-fathom isobath are listed in appendix B to this subpart. There is a rebuttable presumption that any such resource found in the possession of a person within the Sanctuary was taken or removed by that person.

(4)(i) On or within the line representing the 50-fathom isobath surrounding Cordell Bank, drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material or other matter on or in the submerged lands. This prohibition does not apply to use of bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States). The coordinates for the line representing the 50-fathom isobath are listed in appendix B to this subpart.

(ii) In the Sanctuary beyond the line representing the 50-fathom isobath surrounding Cordell Bank, drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material or matter on the submerged lands except as incidental and necessary for anchoring any vessel or lawful use of any fishing gear during normal fishing activities. The coordinates for the line representing the 50-fathom isobath are listed in appendix B to this subpart.

(5) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*,

Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(6) Possessing within the Sanctuary (regardless of where taken, moved or removed from), any marine mammal, sea turtle or bird taken, except as authorized by the MMPA, ESA, MBTA, by any regulation, as amended, promulgated under the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.

(7) Possessing, moving, removing, or injuring, or attempting to possess, move, remove or injure, a Sanctuary historical resource.

(8) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

(9) Interfering with, obstructing, delaying, or preventing an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment.

(c) All activities being carried out by the Department of Defense (DOD) within the Sanctuary on the effective date of designation or expansion of the Sanctuary that are necessary for national defense are exempt from the prohibitions contained in the regulations in this subpart. Additional DOD activities initiated after the effective date of designation or expansion that are necessary for national defense will be exempted by the Director after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, are subject to all prohibitions contained in the regulations in this subpart.

(d) The prohibitions in paragraphs (a)(2), (a)(3), and (a)(4)(ii) through (a)(7) of this section do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation or expansion and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with 15 CFR 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and

qualities. Amendments, renewals, and extensions of authorizations in existence on the effective date of designation or expansion constitute authorizations issued after the effective date of Sanctuary designation or expansion.

(e) The prohibitions in paragraphs (a)(2) through (7) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to 15 CFR 922.48 and 922.113 or a Special Use permit issued pursuant to section 310 of the Act.

(f) Where necessary to prevent immediate, serious, and irreversible damage to a Sanctuary resource, any activity may be regulated within the limits of the Act on an emergency basis for no more than 120 days.

§ 922.113 Permit procedures and issuance criteria.

(a) A person may conduct an activity prohibited by § 922.112, (a)(2), through (a)(7), if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under § 922.48 and this section.

(b) The Director, at his or her discretion, may issue a national marine sanctuary permit under this section, subject to terms and conditions, as he or she deems appropriate, if the Director finds that the activity will:

(1) Further research or monitoring related to Sanctuary resources and qualities;

(2) Further the educational value of the Sanctuary;

(3) Further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or

(4) Assist in managing the Sanctuary.

(c) In deciding whether to issue a permit, the Director shall consider such factors as:

(1) The applicant is qualified to conduct and complete the proposed activity;

(2) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(3) The methods and procedures proposed by the applicant are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;

(4) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the

conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(5) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;

(6) It is necessary to conduct the proposed activity within the Sanctuary;

(7) The reasonably expected end value of the proposed activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and

(8) The Director may consider additional factors as he or she deems appropriate.

(d) *Applications.* (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950.

(2) In addition to the information listed in § 922.48(b), all applications must include information to be considered by the Director in paragraph (b) and (c) of this section.

(e) The permittee must agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

Appendix A to Subpart K of Part 922—Cordell Bank National Marine Sanctuary Boundary Coordinates

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

SANCTUARY BOUNDARY COORDINATES

Point ID No. sanctuary boundary	Latitude	Longitude
1	38.29989	- 123.20005
2	38.29989	- 123.99988
3	37.76687	- 123.75143
4	37.76687	- 123.42694
5	37.83480	- 123.42579
6	37.90464	- 123.38958
7	37.95880	- 123.32312
8	37.98947	- 123.23615
9	37.99227	- 123.14137
10	38.05202	- 123.12827
11	38.06505	- 123.11711
12	38.07898	- 123.10924
13	38.09069	- 123.10387
14	38.10215	- 123.09804

**SANCTUARY BOUNDARY
COORDINATES—Continued**

Point ID No. sanctuary boundary	Latitude	Longitude
15	38.12829	- 123.08742
16	38.14072	- 123.08237
17	38.16576	- 123.09207
18	38.21001	- 123.11913
19	38.26390	- 123.18138
20	38.29989	- 123.20005

**Appendix B to Subpart K of Part 922—
Line Representing the 50-Fathom
Isobath Surrounding Cordell Bank**

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

CORDELL BANK FIFTY FATHOM LINE

Point ID No.	Latitude	Longitude
1	37.96034	- 123.40371
2	37.96172	- 123.42081
3	37.9911	- 123.44379
4	38.00406	- 123.46443
5	38.01637	- 123.46076

**CORDELL BANK FIFTY FATHOM LINE—
Continued**

Point ID No.	Latitude	Longitude
6	38.04684	- 123.47920
7	38.07106	- 123.48754
8	38.07588	- 123.47195
9	38.06451	- 123.46146
10	38.07123	- 123.44467
11	38.04446	- 123.40286
12	38.01442	- 123.38588
13	37.98859	- 123.37533
14	37.97071	- 123.38605

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Part III

Environmental Protection Agency

40 CFR Part 241

Additions to List of Section 241.4 Categorical Non-Waste Fuels; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 241

[EPA-HQ-RCRA-2013-0110; FRL-9900-55-OSWER]

RIN-2050-AG74

Additions to List of Section 241.4 Categorical Non-Waste Fuels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing amendments to the Non-Hazardous Secondary Materials (NHSM) regulation under the Resource Conservation and Recovery Act (RCRA). The NHSM rule generally established standards and procedures for identifying whether non-hazardous secondary materials are solid wastes when used as fuels or ingredients in combustion units. In a February 7, 2013 rule, EPA listed particular non-hazardous secondary materials as “categorical non-waste fuels” provided certain conditions are met. EPA also indicated that it would consider adding additional non-hazardous secondary materials to the categorical listings. Today’s action proposes to add three materials to the list of categorical non-waste fuels: Construction and demolition (C&D) wood processed from C&D debris according to best management practices; Paper recycling residuals, including old corrugated cardboard (OCC) rejects, generated from the recycling of recovered paper and paperboard products and burned on-site by paper recycling mills whose boilers are designed to burn solid fuel; and Creosote treated railroad ties that are processed and combusted in units designed to burn both biomass and fuel oil.

DATES: Comments must be received on or before June 13, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2013-0110 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- **Email:** Comments may be sent by electronic mail (email) to rcra-docket@epa.gov, Attention Docket ID No. EPA-HQ-RCRA-2013-0110.
- **Mail:** Send comments to: RCRA Docket, EPA Docket Center, Mail Code 28221T, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington DC 20460, Attention

Docket ID No. EPA-HQ-RCRA-2013-0110. Please include two copies of your comments. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th St. NW., Washington DC 20503.

- **Hand delivery:** Deliver two copies of your comments to: Environmental Protection Agency, EPA Docket Center, Room 3334, 1301 Constitution Avenue NW., Washington DC, Attention Docket ID No. EPA-HQ-RCRA-2013-0110. Such deliveries are only accepted during the docket’s normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-RCRA-2013-0110. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means 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 <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, 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. For additional information about EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the RCRA 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, and the telephone number for the RCRA Docket is (202) 566-0270.

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of this rulemaking, contact George Faison, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-7652; fax number: 703-308-0509; email: faison.george@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Does this action apply to me?

Categories and entities potentially affected by this action, either directly or indirectly, include, but may not be limited to the following:

GENERATORS AND POTENTIAL USERS^a OF THE NEW MATERIALS PROPOSED TO BE ADDED TO THE LIST OF CATEGORICAL NON-WASTE FUELS

Primary Industry Category or Sub Category	NAICS ^b
Utilities	221
Construction of Buildings	236
Site Preparation Contractors	238910
Manufacturing	31, 32, 33
Wood Product Manufacturing ...	321
Sawmills	321113
Wood Preservation (includes crosstie creosote treating)	321114
Pulp, Paper, and Paper Products	322
Cement manufacturing	32731
Railroads (includes line haul and short line)	482
Scenic and Sightseeing Transportation, Land (Includes: railroad, scenic and sightseeing)	487110
Port and Harbor Operations (Used railroad ties)	488310

GENERATORS AND POTENTIAL USERS^a OF THE NEW MATERIALS PROPOSED TO BE ADDED TO THE LIST OF CATEGORICAL NON-WASTE FUELS—Continued

Primary Industry Category or Sub Category	NAICS ^b
Landscaping Services	561730
Solid Waste Collection	562111
Solid Waste Landfill	562212
Solid Waste Combustors and Incinerators	562213
Marinas	713930

^aIncludes: Major Source Boilers, Area Source Boilers, and Solid Waste Incinerators.

^bNAICS—North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially impacted by this action. This table lists examples of the types of entities of which EPA is aware that could potentially be affected by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is affected by this action, you should examine the applicability criteria in this rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or email. Clearly mark all information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed, except in accordance with the procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask commenters to respond to specific questions or organize comments by

referencing a Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If estimating burden or costs, explain methods used to arrive at the estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate any concerns and suggest alternatives. Make sure to submit comments by the comment period deadline identified above.

C. How do I obtain a copy of this document and other related information?

The docket number for this proposed action is Docket ID No. EPA-HQ-RCRA-2013-0110. In addition to being available in the docket, an electronic copy of the proposed action is available on EPA's Web site at <http://www.epa.gov/epawaste/nonhaz/define/>. EPA posted a copy of the proposed action on this Web site, as well as other information related to this proposed action.

Organization of this Document. The following outline is provided to aid in locating information in this preamble.

Preamble Outline

- I. Statutory Authority
- II. List of Abbreviations and Acronyms
- III. Introduction
- IV. Background
 - A. History of the NHSM Rulemakings
 - B. Background to Today's Proposed Rule
 - C. How will EPA make a categorical non-waste determination?
- V. Proposed Categorical Non-Waste Listing Determinations
 - A. Construction and Demolition (C&D) Debris Processed According to Best Management Practices
 1. Detailed Description of C&D Wood
 2. C&D Wood Under Current NHSM Final Rules
 3. Comments Submitted on C&D Wood in the December 2011 Proposed Rule
 4. Scope of Proposed Categorical Non-Waste Listing for C&D Wood
 5. Rationale for Proposed Listing
 6. Summary and Request for Comment
 - B. Paper Recycling Residuals (PRRs)
 1. Detailed Description of PRRs
 2. OCC Rejects Under Current NHSM Rules
 3. Scope of Proposed Categorical Non-Waste Listing for PRRs
 4. Rationale for Proposed Listing
 5. Summary and Request for Comment
 - C. Creosote-Treated Railroad Ties (CTRTs)
 1. Detailed Description of CTRTs
 2. CTRTs Under Current NHSM Rules
 3. Scope of Proposed Categorical Listing for CTRTs

4. Rationale for Proposed Listing
5. Summary and Request for Comment
- VI. Technical Corrections
 - A. Change to 40 CFR 241.3(b)(2)
 - B. Change to 40 CFR 241.3(c)(1)
 - C. Change to 40 CFR 241.3(d)(1)(iii)
- VII. Effect of Today's Proposal on Other Programs
- VIII. State Authority
 - A. Relationship to State Programs
 - B. State Adoption of the Rulemaking
- IX. Cost and Benefits
- X. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act
 - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. Statutory Authority

The EPA is proposing that additional non-hazardous secondary materials (NHSMs) be categorically listed as non-waste fuels in 40 CFR part 241.4(a) under the authority of sections 2002(a)(1) and 1004(27) of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6912(a)(1) and 6903(27). Section 129(a)(1)(D) of the Clean Air Act (CAA) directs the EPA to establish standards for Commercial and Industrial Solid Waste Incinerators (CISWI), which burn solid waste. Section 129(g)(6) of the CAA provides that the term "solid waste" is to be established by the EPA under RCRA (42 U.S.C. 7429). Section 2002(a)(1) of RCRA authorizes the Agency to promulgate regulations as are necessary to carry out its functions under the Act. The statutory definition of "solid waste" is stated in RCRA section 1004(27).

II. List of Abbreviations and Acronyms

- ATCM Airborne Toxic Control Measure
 BMP Best Management Practice
 Btu British thermal unit
 C&D Construction and Demolition
 CAA Clean Air Act
 CARB California Air Resources Board
 CBI Confidential Business Information
 CCA Chromated Copper Arsenate
 CFR Code of Federal Regulations

CISWI Commercial and Industrial Solid Waste Incinerator
 CRTT Creosote-Treated Railroad Tie
 EPA U.S. Environmental Protection Agency
 FR Federal Register
 HAP Hazardous Air Pollutant
 ICR Information Collection Request
 MACT Maximum Achievable Control Technology
 NAICS North American Industrial Classification System
 ND Non-detect
 NESHAP National Emission Standards for Hazardous Air Pollutants
 NHSM Non-Hazardous Secondary Material
 OCC Old Corrugated Cardboard
 OMB Office of Management and Budget
 PAH Polycyclic Aromatic Hydrocarbons
 ppm Parts Per Million
 PRR Paper Recycling Residual
 PVC Polyvinyl Chloride
 RCRA Resource Conservation and Recovery Act
 RIN Regulatory Information Number
 SBA Small Business Administration
 SO₂ Sulfur Dioxide
 SVOC Semi-volatile organic compound
 TCLP Toxicity Characteristic Leaching Procedure
 UMRA Unfunded Mandates Reform Act
 UPL Upper Prediction Limit
 U.S.C. United States Code
 VOC Volatile organic compound
 WWW Worldwide Web
 XRF X-Ray Fluorescence

III. Introduction

The Resource Conservation and Recovery Act (RCRA) defines “solid waste” as “. . . any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and *other discarded material* . . . resulting from industrial, commercial, mining, and agricultural operations, and from community activities . . .” (RCRA section 1004 (27) (emphasis added)). The key concept is that of “discard” and, in fact, this definition turns on the meaning of the phrase, “other discarded material,” since this term encompasses all other examples provided in the definition.

The meaning of “solid waste,” as defined under RCRA, is of particular importance as it relates to section 129 of the Clean Air Act (CAA). If material is a solid waste under RCRA, a combustion unit burning it is required to meet the CAA section 129 emission standards for solid waste incineration units. If the material is not a solid waste, combustion units are required to meet the CAA section 112 emission standards for commercial, industrial, and institutional boilers. Under CAA section 129, the term “solid waste incineration unit” is defined, in pertinent part, to mean “a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial

establishments . . .” 42 U.S.C. 7429(g)(1). CAA section 129 further states that the term “solid waste” shall have the meaning “established by the Administrator pursuant to the Solid Waste Disposal Act.” *Id.* at 7429(g)(6). The Solid Waste Disposal Act, as amended, is commonly referred to as the Resource Conservation and Recovery Act or RCRA.

Regulations concerning non-hazardous secondary materials (NHSM) used as fuels or ingredients in combustion units are codified in 40 CFR part 241.¹ Today’s action proposes to amend the part 241 regulations by adding three NHSMs to the list of categorical non-waste fuels codified in 241.4(a). These new proposed categorical listings are for:

- Construction and demolition (C&D) wood processed from C&D *debris* according to best management practices (refer to Section V of the preamble or the proposed regulatory text for a full description of the categorical listing).
- Paper recycling residuals, including old corrugated cardboard (OCC) rejects, generated from the recycling of recovered paper and paperboard products and burned on-site by paper recycling mills whose boilers are designed to burn solid fuel.
- Creosote-treated railroad ties that are processed and combusted in units designed to burn both biomass and fuel oil.

IV. Background

A. History of the NHSM Rulemakings

The Agency first solicited comments on how the RCRA definition of solid waste should apply to NHSMs when used as fuels or ingredients in combustion units in an advanced notice of proposed rulemaking (ANPRM), which was published in the **Federal Register** on January 2, 2009 (74 FR 41). We then published an NHSM proposed rule on June 4, 2010 (75 FR 31844), which EPA made final on March 21, 2011 (76 FR 15456).

The March 2011, NHSM final rule codified the standards and procedures to be used for identifying which NHSMs are “solid waste” when used as fuels or ingredients in combustion units. Under that rule, traditional fuels, including historically managed traditional fuels (e.g. coal, oil, natural gas) and “alternative” traditional fuels (e.g. clean cellulosic biomass) are not secondary materials and thus, are not solid wastes. In addition, the Agency identified the following NHSMs as not being solid wastes:

¹ See 40 CFR 241.2 for the definition of non-hazardous secondary material.

- The NHSM is used as a fuel and remains under the control of the generator (whether at the site of generation or another site the generator has control over) that meets the legitimacy criteria (40 CFR 241.3(b)(1));
- The NHSM is used as an ingredient in a manufacturing process (whether by the generator or outside the control of the generator) that meets the legitimacy criteria (40 CFR 241.3(b)(3));
- The NHSM has been sufficiently processed to produce a fuel or ingredient that meets the legitimacy criteria (40 CFR 241.3(b)(4)); or
- Through a case-by-case petition process, it has been determined that the NHSM handled outside the control of the generator has not been discarded, is indistinguishable in all relevant aspects from a fuel product, and meets the legitimacy criteria (40 CFR 241.3(c)).

In October 2011, the Agency announced that it would be initiating a new rulemaking proceeding to revise certain aspects of the NHSM rule.² On December 23, 2011, EPA published a proposed rule, which addressed specific targeted amendments and clarifications to the 40 CFR part 241 regulations (76 FR 80452). These proposed revisions and clarifications were limited to certain issues on which the Agency had received new information, as well as targeted revisions that the Agency believed were appropriate in order to allow implementation of the rule as EPA originally intended. The amendments to the part 241 regulations were made final on February 7, 2013 with modifications to § 241.2, § 241.3 and the addition of § 241.4, and include the following:³

- *Revised Definitions*: EPA revised three definitions discussed in the proposed rule: (1) “clean cellulosic biomass,” (2) “contaminants,” and (3) “established tire collection programs.” In addition, based on comments received on the proposed rule, the Agency revised the definition of “resinated wood.”
- *Contaminant Legitimacy Criterion for NHSMs Used as Fuels*: EPA issued revised contaminant legitimacy criterion for NHSMs used as fuels to provide additional details on how contaminant-specific comparisons between NHSMs and traditional fuels may be made.⁴

² See October 14, 2011, Letter from Administrator Lisa P. Jackson to Senator Olympia Snowe. See docket (EPA-HQ-RCRA-2008-0329-1873).

³ See 78 FR 9112 (February 7, 2013) for a discussion of the rule and the Agency’s basis for its decisions.

⁴ Under 40 CFR 241.3(d)(1), the legitimacy criteria for fuels include: (1) management of the material as a valuable commodity based on the following factors—storage prior to use must not exceed reasonable time frames, and management of the material must be in a manner consistent with an

The revisions include: (1) the ability to compare groups of contaminants where technically reasonable; (2) clarification that “designed to burn” means can burn or does burn, and not necessarily permitted to burn; (3) the ability to use traditional fuel data from national surveys and other sources beyond a facility’s current fuel supplier; and (4) the ability to use ranges of traditional fuel contaminant levels when making contaminant comparisons, provided the variability of the NHSM contaminant levels is also considered.

• *Categorical Non-Waste Determinations for Specific NHSMs Used as Fuels:* EPA codified determinations that certain NHSMs are non-wastes when used as fuels. If a material is categorically listed as a non-waste fuel, persons that generate or burn these NHSMs will not need to make individual determinations, as required under the existing rules, that these NHSMs meet the legitimacy criteria. Except where otherwise noted, combustors of these materials will not be required to provide further information demonstrating their non-waste status. Based on all available information, the EPA determined that the following NHSMs are not solid wastes when burned as a fuel in combustion units and has categorically listed them in 241.4(a).⁵ (1) Scrap tires that are not discarded and are managed under the oversight of established tire collection programs, including tires removed from vehicles and off-specification tires;

(2) Resinated wood; (3) Coal refuse that has been recovered from legacy piles and processed in the same manner as currently-generated coal refuse;

(4) Dewatered pulp and paper sludges that are not discarded and are generated and burned on-site by pulp and paper mills that burn a significant portion of such materials where such dewatered residuals are managed in a manner that

analogous fuel, or where there is no analogous fuel, adequately contained to prevent releases to the environment; (2) the material must have a meaningful heating value and be used as a fuel in a combustion unit that recovers energy; and (3) the material must contain contaminants at levels comparable to or less than those in traditional fuels which the combustion unit is designed to burn.

⁵ In the March 2011 NHSM rule, EPA identified two NHSMs as not being solid wastes, although persons would still need to make individual determinations that these NHSMs meet the legitimacy criteria: (1) Scrap tires used in a combustion unit that are removed from vehicles and managed under the oversight of established tire collection programs and (2) resinated wood used in a combustion unit. However, in the February 2013 NHSM rule, the Agency amended the regulations and categorically listed these NHSMs as not being solid wastes.

preserves the meaningful heating value of the materials.

• *Rulemaking Petition Process for Other Categorical Non-Waste Determinations:* EPA made final a rulemaking process in § 241.4(b) that provides persons an opportunity to submit a rulemaking petition to the Administrator, seeking a determination for additional NHSMs to be categorically listed in § 241.4(a) as non-waste fuels, if they can demonstrate that the NHSM meets the legitimacy criteria, or after balancing the legitimacy criteria with other relevant factors, EPA determines that the NHSM is not a solid waste when used as a fuel.

The February 2013 amendments under § 241.4, entitled “Non-Waste Determinations for Specific Non-Hazardous Secondary Materials When Used as a Fuel” were in response to issues raised after promulgation of the March 2011, NHSM final rule concerning application of the legitimacy criteria, and the extent of information required to make a demonstration that an NHSM is not a solid waste. To provide additional clarity and assist in implementation of the rule, the Agency also codified in § 241.4(b) a process for determining that certain NHSMs are not solid wastes when used as a fuel for the purpose of energy recovery, where the Agency has sufficient information and knowledge that these NHSMs are not wastes.

Based on these non-waste categorical determinations, as discussed above, facilities burning NHSMs that meet the categorical listing description will not need to make individual determinations that the NHSM meets the legitimacy criteria or provide further information demonstrating their non-waste status on a site-by-site basis, provided they meet the conditions of the categorical listing. Please refer to Section IV.C (How Will EPA Make a Categorical Non-Waste Determination?) below for details on the process.

B. Background to Today’s Proposed Rule

As discussed in the February 2013 final rule,⁶ the Agency received comments on the December 23, 2011, proposed rule that additional NHSMs should be categorically listed as non-waste fuels for which the Agency had not requested information as a part of that proposal. We did not respond to such comments and issues since they were beyond the scope of that rulemaking and indicated that, because

⁶ 78 FR 9111, February 7, 2013 (page 9172 in a section called “Other Materials for Which Additional Information Was Not Requested”).

the Agency did not specifically solicit comments or propose that those NHSMs be categorically listed in 40 CFR 241.4(a), the Agency must go through notice and comment rulemaking before making a final decision. The February 2013 final rule noted, however, that two NHSMs—paper recycling residuals (including OCC rejects) and construction and demolition debris processed pursuant to best practices—would be good candidates for a future proposal based on information provided to the Agency⁷ and expected to propose those listings in a subsequent rulemaking.

In addition to the comments identified in the February 2013 rule, the Agency received supplementary information on these two NHSMs from stakeholders (see Section V). As discussed in the following sections, EPA believes that the information received to date, when taken together, supports a categorical determination of these materials as non-waste fuels and is today proposing to list them as categorical non-waste fuels in section 241.4(a).

Furthermore, the Agency identified creosote-treated railroad ties in the February 2013 final rule as a potential candidate for a categorical non-waste listing. However, the Agency also indicated that additional information would need to be submitted before this NHSM could be addressed. If such information supported the representations made by the industry—that is, the American Forest & Paper Association (AF&PA) and the American Wood Council—EPA stated that it expected to propose a categorical listing

⁷ Comments on December 23, 2011 proposed rule supporting a categorical non-waste determination for paper recycling residuals: American Forest & Paper Association, et al. EPA-HQ-RCRA-2008-0329-1946-A1; Georgia-Pacific LLC (GP) EPA-HQ-RCRA-2008-0329-1902-A1; National Alliance of Forest Owners (NAFO) EPA-HQ-RCRA-2008-0329-1950-A2; Packaging Corporation of America (PCA) EPA-HQ-RCRA-2008-0329-1966-A1; and United Steelworkers (USW) EPA-HQ-RCRA-2008-0329-1910-A1. Comments supporting a categorical non-waste determination for paper recycling residuals and C&D wood: American Forest & Paper Association, et al. EPA-HQ-RCRA-2008-0329-1946-A1; Construction Materials Recycling Association (CMRA) EPA-HQ-RCRA-2008-0329-1928-A1; Covanta Energy Corporation (Covanta) EPA-HQ-RCRA-2008-0329-1893-A; Energy Recovery Council (ERC) EPA-HQ-RCRA-2008-0329-1927-A1; Georgia-Pacific LLC (GP) EPA-HQ-RCRA-2008-0329-1902-A1; Michigan Biomass EPA-HQ-RCRA-2008-0329-1905-A1; National Alliance of Forest Owners (NAFO) EPA-HQ-RCRA-2008-0329-1950-A2; United Steelworkers (USW) EPA-HQ-RCRA-2008-0329-1910-A1; Waste Management (WM) EPA-HQ-RCRA-2008-0329-1957-A2; and Weyerhaeuser EPA-HQ-RCRA-2008-0329-1930-A1.

for this material as well.^{8,9} Finally, we noted in the February 2013 final rule that the Agency received a letter from the Treated Wood Council asking that non-hazardous treated wood be categorically listed—a broad category that would include creosote-treated railroad ties. The Agency noted that it was in the process of reviewing the information in the letter and would consider whether to propose a categorical listing for this broader set of treated wood material.

The Agency has reviewed the information submitted from stakeholders regarding creosote-treated railroad ties. As discussed in the following sections, EPA believes that the information received to date, when taken together, supports a categorical determination of the processed creosote-treated railroad ties as non-waste fuels when combusted in units designed to burn both biomass and fuel oil and is today proposing to list them as categorical non-waste fuels in section 241.4(a).

C. How will EPA make a categorical non-waste determination?

The February 7, 2013, revisions to the NHSM rule discuss the process and decision criteria whereby the Agency would make additional categorical non-waste determinations. The proposed determinations regarding processed C&D wood, paper recycling residuals, and creosote-treated railroad ties described in the following sections are based on information submitted during the February 7, 2013, rulemaking effort, as well as supplementary information received since issuance of the rule.

While the proposed categorical non-wastes are not based on rulemaking petitions, the criteria EPA used to assess these NHSMs as categorical non-wastes matches the criteria to be used by the Administrator to determine whether to grant or deny the categorical non-waste

petitions.^{10,11} These determinations follow the criteria set out in § 241.4(b)(5) to assess additional categorical non-waste petitions and follow the statutory standards as interpreted by EPA in the NHSM rule for deciding whether secondary materials are wastes. Pursuant to these criteria, the supporting information will ultimately need to demonstrate that each NHSM has not been previously discarded (*i.e.*, was not initially abandoned or thrown away), or if discarded, has been sufficiently processed, and is legitimately used as a product fuel. The information (including supporting tests or studies) must also demonstrate that each NHSM is used as a non-waste fuel in a combustion unit and that it either meets the legitimacy criteria as described in § 241.3(d)(1) or, if the NHSM does not meet the legitimacy criteria, that the NHSM is a legitimate product fuel, after balancing the legitimacy criteria with other relevant factors (e.g. the non-hazardous secondary material is integrally tied to production practices, or the material is functionally the same as the comparable traditional fuel, etc.).

Based on comments received on this information, the Agency will determine whether (or not) to list the three proposed NHSMs as categorical non-wastes in a final rule. Specific preliminary determinations on whether processed C&D wood, paper recycling residuals, and creosote-treated railroad ties should be listed as categorical non-wastes and how the information was assessed by EPA according to the criteria in § 241.4(b)(5) are discussed in detail in Section V.

As noted above, the Agency also received a petition from the Treated Wood Council asking that non-hazardous treated wood be categorically listed—a broad category that would include creosote-treated railroad ties. Other treated wood addressed in the petition included waterborne borate-based preservatives, waterborne organic-based preservatives, waterborne copper-based wood preservatives (ammoniacal/alkaline copper quat, copper azole, copper HDO, alkaline copper betaine, or copper naphthenate); creosote; oilborne copper naphthenate; pentachlorophenol; or dual-treated with any of the above. The Agency is in the process of reviewing that petition and

supplementary information submitted subsequent to the petition. Accordingly, while creosote treated railroad ties is included in the current proposal, other treated wood materials identified in the Treated Wood Council's petition are not addressed in today's proposal. If upon completion of the Agency's review of the Treated Wood Council's petition the information supports a categorical listing of one or more of these other treated wood materials, the Agency would propose those materials in a future rulemaking.

V. Proposed Categorical Non-Waste Listing Determinations

The sections below describe the three additional NHSMs that EPA is proposing to categorically list in section 241.4(a) as not being solid wastes when burned as a fuel in combustion units. Definitions for these three NHSMs are also proposed to be defined in 40 CFR 241.2 and we are taking comment on those definitions.

A. Construction and Demolition (C&D) Debris Processed According to Best Management Practices

1. Detailed Description of C&D Wood

C&D wood is generated from the processing of debris from construction and demolition activities for the purposes of recovering wood. At *construction* activities, this debris results from cutting wood down to size during installation or from purchasing more wood than a project ultimately requires, while at *demolition* activities, this debris results from dismantling buildings and other structures or removing materials during renovation. Information previously compiled by the Agency indicates that C&D activities generate an estimated 33 to 49 million tons of scrap wood each year, approximately half of which is of acceptable size, quality, and condition to be considered available for recovery. However, information on the amount of processed C&D wood that is burned for energy recovery is unavailable, although sources surveyed by EPA for the 2010 proposed Commercial and Industrial Solid Waste Incinerator (CISWI) rule and the National Emission Standards for Hazardous Air Pollutants for Area and Major Industrial, Commercial, and Institutional Boilers (Boilers) rule indicate that between 4.7 to 11.2 million tons per year of processed C&D wood may be burned for energy recovery.¹²

Also, as discussed below, because clean C&D wood is considered “clean

⁸ The additional information EPA cited in the preamble to the final rule for which it solicited comment included: (1) a list of industry sectors, in addition to forest product mills, that burn creosote-treated railroad ties for energy recovery, (2) the types of boilers (e.g., kilns, stoker boilers, circulating fluidized bed, etc.) that burn creosote-treated railroad ties for energy recovery, (3) the traditional fuels and relative amounts (e.g., startup, 30%, 100%) of these traditional fuels that could otherwise generally be burned in these types of boilers, (4) the extent to which non-industrial boilers (e.g., commercial or residential boilers) burn creosote-treated railroad ties for energy recovery, and (5) laboratory analyses for contaminants known to be present in creosote-treated railroad ties or known to be significant components of creosote, specifically, polycyclic aromatic hydrocarbons (*i.e.*, PAH-16), dioxins, dibenzofurans, hexachlorobenzene, biphenyl, quinoline, cresols, and 2,4-dinitrotoluene.

⁹ 78 FR 9111, February 7, 2013 (page 9172)

¹⁰ For a full discussion regarding the petition process for receiving a categorical non-waste determination, see 78 FR 9111, February 7, 2013 (page 9158).

¹¹ Supplementary information received from by M.A. Energy Resources (February 2013) in support of the crosstie derived fuel was submitted as a categorical petition in accordance 40 CFR 241.4(b).

¹² Materials Characterization Paper: Construction and Demolition Materials. February 3, 2011. EPA-HQ-RCRA-2008-0329-1811.

cellulosic biomass” and is already excluded from being a solid waste, we believe that today’s proposal addresses C&D wood generated predominantly from demolition activities.¹³ However, clean C&D wood generated from construction activities, that is mixed with C&D debris that contains contaminated material would be subject to the same proposed practices and requirements described in this proposed rulemaking because it is not within the definition of “clean cellulosic biomass.”

Although contractors may segregate C&D debris at building sites, the common practice—at demolition sites in particular—is to send co-mingled debris to independent C&D recycling or processing facilities. At these facilities, operators recover wood scraps from a mixture of building materials that often includes metals, concrete, plastics, and other items that are unsuitable for energy recovery in combustion units. Some operators use “positive sorting” techniques, meaning they specifically remove wood scraps from the co-mingled debris, picking out only desirable wood and leaving all other C&D debris behind for disposal or other recycling processes. Other operators use “negative sorting” techniques, meaning they achieve a similarly clean final product by removing or excluding contaminated or otherwise undesirable material from the C&D debris. Regardless of whether they use positive or negative sorting, processing facilities then grind the recovered wood to a specified size and deliver it to energy recovery facilities.

C&D wood processing facilities can use a variety of techniques to remove or exclude debris unsuitable for a fuel product. Typically, processors use some combination of source control, inspection, sorting, and screening to meet the specifications identified by their customers (*i.e.*, combustion facilities). The nature of the incoming C&D debris, the extent of material segregation prior to arrival at the processing facility, whether positive or negative sorting is employed, and the scale of the processing facility (*e.g.*, the degree of sorting and number of screening devices) help determine which combination of practices will be

¹³ Clean C&D wood is included in the definition of “clean cellulosic biomass” and thus, may be combusted as a traditional fuel if it does not contain contaminants at concentrations not normally associated with virgin wood. (See 78 FR 9138, February 7, 2012 and 40 CFR 241.2.) Conversely, C&D wood that is not “clean” is that which must be processed to remove contaminants such as lead-painted wood, treated wood containing contaminants, such as arsenic and chromium, metals and other non-wood materials. (See 78 FR 9139, February 7, 2013).

most effective. Individual states also have different requirements related to the processing and combustion of C&D wood.¹⁴ Despite the variety of options, certain practices, which are described below in Section V.A.4 (*Rationale for Proposed Listing*), are essential to ensuring that processing the C&D debris produces a legitimate product fuel. In addition to excluding or removing a set list of C&D materials known to contain contaminants (*e.g.*, certain types of treated wood), processors must take steps to minimize less obvious contaminant sources (*e.g.*, lead-based paint). Consequently, the standards proposed in this rule are designed to ensure that the contaminants in the fuel that is burned will not be unpredictable, even though the sources of the wood may vary.

2. C&D Wood Under Current NHSM Final Rules

In both the March 2011 and February 2013 NHSM final rules, EPA discussed two scenarios under which the Agency would consider C&D wood to be a non-waste fuel.¹⁵ First, “clean” C&D wood can be burned as a traditional fuel—without any requirement for testing or recordkeeping—because it is a “clean cellulosic biomass” material indistinguishable in composition from virgin wood. Second, the Agency believes that wood recovered from C&D debris (*i.e.*, contaminated wood) can be sufficiently processed to meet the legitimacy criteria and, thus, would be a non-waste fuel, although combustion facilities burning the material would need to keep records documenting the material’s non-waste status. Records would need to document not only how the processing operations meet the definition of processing in section 241.2, but also how the fuel product meets the NHSM legitimacy criteria.^{16 17} The Agency believes that much of the C&D wood recovered from *construction* activities is unused and untreated, thereby falling under the definition of “clean cellulosic biomass” (*i.e.*, the first

¹⁴ This rulemaking does not change or replace existing state requirements regarding C&D wood. See Section VIII, *State Authority*, for further explanation.

¹⁵ 76 FR 15456, March 21, 2011 (page 15485); and 78 FR 9111, February 7, 2013 (page 9138).

¹⁶ Recordkeeping requirements for area source boilers are found at § 63.11225(c)(2)(ii), while recordkeeping requirements for major source boilers are found at § 63.7555(d)(2).

¹⁷ While the combustor would be responsible for maintaining the records that such NHSM met the legitimacy criteria, the combustor could request that the person that generated the C&D wood provide them with documentation that the processing operations meets the definition of processing, as well as the legitimacy criteria, especially the contaminant legitimacy criterion.

scenario), and that much of the C&D wood currently recovered from *demolition* activities can be sufficiently processed to meet the legitimacy criteria (*i.e.*, the second scenario).

3. Comments Submitted on C&D Wood in the December 2011 Proposed Rule

Although the December 2011 NHSM proposed rule did not discuss or solicit comments on processed C&D wood, a number of commenters submitted comments arguing that processed C&D wood (*i.e.*, that is recovered from demolition activities) should be categorically listed as a non-waste fuel under section 241.4(a), or otherwise a non-waste.¹⁸ The commenters’ rationale for listing processed C&D wood as a non-waste fuel includes the following.

- It is utilized in combination with other biomass materials to optimize and manage combustion in boilers due to its low moisture/high heat characteristics.

- It is sufficiently processed to remove impurities.

- From a practical materials management standpoint, C&D materials are not discarded; collection of most of these materials is planned for, with C&D recycle sorting and processing yards receiving the materials as a destination and the point of generation of the fuel product.

- Comments detail the processing and test data available for C&D materials, which demonstrates their value as a fuel.

- Commenters noted that EPA has already included clean C&D materials in their proposed clean cellulosic biomass definition for traditional fuels, but EPA elsewhere identifies C&D materials that are not clean as subject to the legitimacy criteria.

The commenters argue, therefore, that EPA should remove doubt and list these materials in the newly proposed § 241.4(a) as a non-waste fuel given their demonstrated fuel value and the industry that has been established for recycling these non-hazardous secondary materials into useful product fuel.

Expanding further on these comments, several trade organizations submitted information in support of a categorical non-waste determination that would list processed C&D wood as a product fuel when burned in combustion units. The information suggested that a non-waste listing include all C&D wood processed in

¹⁸ Comments have been included in docket: EPA–HQ–RCRA–2008–0329. Specifically, see the document ID#’s ending in –1902, –1910, –1950, –1930, –1928, –1946, –1957, –1927, –1893, and –1905.

accordance with industry practices proven to produce a wood product meeting the NHSM legitimacy criteria. The commenters identified “proven practices” as the sorting (both mechanical and manual) of C&D material to separate the following contaminants: non-wood material, wood treated with pentachlorophenol, chromated copper arsenic (CCA) treated wood, or other copper, chromium or arsenical preservatives, and lead (through the separation of either lead-painted wood or fines or through other means as specified in applicable state law). Commenters also compiled a dataset of contaminant concentrations in processed C&D wood from nine combustion facilities in seven states to demonstrate the efficacy of the identified practices.

Case-by-case analysis is not necessary, the trade organizations contend, to ensure that sufficient processing occurs and that C&D wood products—produced by different processors using different sorting techniques—are consistently managed as a valuable commodity, have meaningful heating values, and contain contaminants at levels comparable to or lower than traditional fuels. Instead, they argue that persons burning C&D wood for energy recovery only need to certify that the processed C&D wood came from a facility using the aforementioned sorting practices.

Other commenters on the December 2011 NHSM proposed rule asserted that C&D wood should be regulated as a solid waste based on what they described as highly unpredictable contaminant levels. The commenters referenced specific combustion facilities that accepted C&D wood, including lead-painted wood and CCA-treated wood, as well as plastics and foreign debris.

4. Scope of Proposed Categorical Non-Waste Listing for C&D Wood

EPA has reviewed the information submitted, including the study of contaminants in processed C&D wood from seven states. Based on this review, the Agency is proposing a categorical non-waste listing as follows: Construction and demolition (C&D) wood processed from C&D debris according to best management practices. Combustors of C&D wood must obtain a written certification from C&D processing facilities that the C&D wood has been processed by trained operators in accordance with best management practices.¹⁹ Best management practices

¹⁹ If a person does not believe that the processed C&D wood meets the categorical listing, the processed C&D wood may still be considered a non-

for purposes of this categorical listing must include sorting by trained operators that excludes or removes the following materials from the final product fuel: non-wood materials (e.g., polyvinyl chloride and other plastics, drywall, concrete, aggregates, dirt, and asbestos), and wood treated with creosote,²⁰ pentachlorophenol, chromated copper arsenate, or other copper, chromium, or arsenical preservatives. In addition:

(i) C&D processing facilities that use positive sorting—where operators pick out desirable wood from co-mingled debris—must either exclude all painted wood from the final product fuel, use X-ray Fluorescence to ensure that painted wood included in the final product fuel does not contain lead-based paint, or require documentation that a building has been tested for and does not include lead-based paint before accepting demolition debris from that building.

(ii) C&D processing facilities that use negative sorting—where operators remove contaminated or otherwise undesirable materials from co-mingled debris—must remove fines (i.e., small-sized particles that may contain relatively high concentrations of lead and other contaminants) and either remove painted wood, use X-ray Fluorescence to detect and remove lead-painted wood, or require documentation that a building has been tested for and does not include lead-based paint before accepting demolition debris from that building.

5. Rationale for Proposed Listing

a. Processing of C&D Wood

EPA considers the wood present in C&D debris to be a solid waste prior to processing, and persons must transform the debris into a legitimate product fuel in order to burn the material as a non-waste fuel.²¹ Based on the information

waste fuel (on a case-by-case basis), although any combustor that burns such processed C&D wood would need to keep records documenting the materials non-waste status pursuant to § 63.11225(c)(2)(ii) and § 63.7555(d)(2).

²⁰ Although industry trade groups did not list creosote treated wood as wood that is excluded or removed, they provided information indicating that C&D debris can include creosote treated wood. Based upon the contaminants present in creosote treated wood and the types of boilers that burn C&D wood (i.e., those that are designed to burn clean wood and biomass), we believe it appropriate to require operators to exclude or remove creosote treated wood. With respect to creosote and as discussed later in Section C, the Agency evaluated data provided for creosote-treated railway ties and determined that boiler design was an integral factor in satisfying the contaminant legitimacy criterion.

²¹ This rulemaking does not change the waste status of C&D wood prior to processing, up to which point the material would likely be a solid waste subject to appropriate federal, state, and local

submitted to date, EPA concludes that C&D wood processed according to best management practices—provided those management practices satisfy the conditions set forth in today’s proposal—would be sufficiently processed such that it would be transformed into a non-waste fuel product. In accordance with 40 CFR 241.2, processing must include operations that transform discarded NHSM into a non-waste fuel or non-waste ingredient, including operations necessary to: remove or destroy contaminants; significantly improve the fuel characteristics (e.g., sizing or drying of the material, in combination with other operations); chemically improve the as-fired energy content; or improve the ingredient characteristics. Minimal operations that result only in modifying the size of the material by shredding do not constitute processing for the purposes of the definition.

Compared to mixed C&D debris, processed C&D wood will have significantly fewer contaminants and improved fuel characteristics. Specifically, the removal or exclusion of specified materials, such as creosote-treated wood (PAHs, dibenzofuran), pentachlorophenol-treated wood (pentachlorophenol, dioxins), CCA-treated wood (chromium, arsenic), other copper, chromium, and arsenical treated wood, plastics (chlorine), drywall (sulfur), lead-based paint (lead), as well as insulation and other materials containing asbestos,²² would result in significant contaminant removal. In addition, the removal of concrete, aggregates, dirt, and other non-combustible material will significantly increase the material’s energy value. Finally, grinding all remaining wood to a specified size will allow combustors to transport, store, and use processed C&D wood in the same manner as virgin wood and biomass materials.

As noted earlier in Section V.A.1 (*Detailed Description of C&D Wood*), the

requirements unless it meets the definition of “clean cellulosic biomass.”

²² CAA regulations provide additional safeguards to ensure asbestos is removed from buildings prior to demolition. Part 61, subpart M, § 61.145 requires that owners or operators of a demolition or renovation activity to inspect the affected building for the presence of asbestos prior to demolition or renovation and notify the Administrator. EPA notes, however, that the 40 CFR 61.141 definition of “facility” explicitly excludes “residential buildings having four or fewer dwelling units” thus, small residential buildings that are demolished or renovated are not covered by the Federal asbestos NESHAP regardless of whether the demolition or renovation is performed by agents of the owner of the property or whether the demolition or renovation is performed by agents of the municipality. See also the “Asbestos NESHAP Clarification of Intent” (60 FR 38725; July 28, 1995).

nature of the incoming C&D debris, the extent of material segregation prior to arrival at the processing facility, whether positive or negative sorting is employed, and the scale of the processing facility (e.g., the degree of sorting and number of screening devices) determine which combination of practices will be most effective. The Agency believes that the proposed best management practices when performed by trained operators will address the variability within the industry, such that C&D processing facilities will produce a non-waste fuel product with contaminants that are no greater than clean biomass, regardless of the characteristics (e.g., extent of material segregation prior to arrival at the processing facility) that can influence the level of contaminants in the final wood product. Thus, the Agency believes that such processing meets the definition of processing in 40 CFR 241.2.

Further, to ensure that the C&D wood is processed according to best management practices, the Agency believes it is important for the processor to certify that they are meeting such best management practices, using trained operators.²³ Therefore, we are also proposing that the combustor be required to obtain a written certification from the C&D processor(s) that they have used trained operators in processing the C&D debris in accordance with best management practices to produce processed C&D wood. The combustor has the ultimate responsibility to determine that the C&D wood has been sufficiently processed.

b. Legitimacy Criteria

In determining whether to list processed C&D wood as a categorical non-waste fuel in § 241.4(a), the Agency evaluated the legitimacy criteria in 40 CFR 241.3(d)(1)—that is, whether it is managed as a valuable commodity, whether it has a meaningful heating value and is used as a fuel in a

combustion unit to recover energy, and whether contaminants or groups of contaminants are at levels comparable to or less than those in the traditional fuel the unit is designed to burn. To the extent that processed C&D wood does not meet one or more of the legitimacy criteria, the Agency may consider other relevant factors in determining whether to propose to list C&D wood as a categorical non-waste fuel (40 CFR 241.4(b)(5)(ii)) (see discussion on formaldehyde below).

i. Managed as a Valuable Commodity

Regarding the first legitimacy criterion, EPA believes that C&D trade organizations have demonstrated that both processors and combustors manage processed C&D wood as a valuable commodity. Specifically, after processing, including grinding to size, processors ship the material to energy recovery facilities in covered chip vans or semi-trailers. The material is then stored on-site at the combustion facilities in wood fuel storage yards and generally used within 90 days of delivery. Because storage does not exceed reasonable time frames, and management is similar to that of virgin wood and biomass, the Agency has determined that processed C&D wood meets this legitimacy criterion.

ii. Meaningful Heating Value and Used as a Fuel To Recover Energy

With respect to the second legitimacy criterion, EPA believes C&D trade organizations have demonstrated that processed C&D wood has a meaningful heating value and is used as a fuel to recover energy. Specifically, information submitted to the Agency demonstrates that processed C&D wood has an average as-fired energy content of 6,640 Btu/lb,²⁴ which is greater than 5,000 Btu/lb, which the Agency considers to have a meaningful heating value (see 76 FR 15541, March 21, 2011). This also compares favorably to information compiled by EPA in 2011, in which 95 samples of unadulterated

timber burned by major source boilers across the country exhibited an average as-fired energy content of 5,150 Btu/lb.²⁵ According to C&D trade organizations, energy recovery facilities purchase processed C&D wood and burn the material as fuel to generate electricity. Thus, EPA has determined that processed C&D wood meets this legitimacy criterion.

iii. Contaminants Comparable to or Lower Than Traditional Fuels

To address the third legitimacy criterion, C&D trade organizations provided EPA with contaminant analyses of more than 220 samples of processed C&D wood from nine combustion facilities in California, Maine, Massachusetts, Minnesota, New York, the state of Washington, and Wisconsin. EPA has compared the contaminant levels found in the processed C&D wood to the contaminant levels found in clean wood and biomass materials since any unit burning processed C&D wood can clearly burn clean wood and biomass materials as well.

Summary results for the contaminant comparisons are presented in Table 1, with the contaminants most likely to be present in unprocessed C&D debris listed first. Specifically, arsenic and chromium are likely present due to CCA-treated wood; lead due to lead-based paint chips; mercury due to light bulbs, ballasts, thermostats and other mercury-containing devices present in buildings; chlorine due to PVC and other plastics; sulfur due to plaster or drywall containing gypsum, a sulfate mineral; formaldehyde due to resinated wood; and pentachlorophenol due to utility poles and other treated wood products currently accepted by some combustion facilities. Although sources of fluorine in C&D debris are less clear, the contaminant's presence may be due to its use in flame retardants incorporated into carpet, furniture, and other building materials.

TABLE 1—COMPARISON OF CONTAMINANTS IN CLEAN WOOD/BIOMASS AND PROCESSED C&D WOOD^{26 27 28}

Contaminant	Clean Wood/Biomass		Processed C&D wood		
	Range	# samples	Average	90% UPL	Maximum
Contaminants Most Likely to be Present in C&D Debris					
Arsenic	ND—298	n = 221	35.9	91.8	261
Chromium	ND—340	n = 212	45.0	116	283

²³ Results from a pilot study conducted in the state of Florida indicate that the processing facilities that were highly successful in identifying treated wood (i.e., CCA-treated wood) had extensive worker training programs in place. See Blassino,

Monika, et al. "Methods to Control Fuel Quality at Wood Burning Facilities."

²⁴ Appendix A of April 26, 2013, submittal from Susan Bodine on behalf of BPA and CMRA.

²⁵ USEPA, Office of Air Quality Planning and Standards, Emissions Database for Boilers and

Process Heaters Containing Stack Test, CEM & Fuel Analysis Data Reported Under ICR No. 2286.01 and ICR No. 2286.03 (Version 6). EPA Docket/Document Number EPA-HQ-OAR-2002-0058-3255. February 2011.

TABLE 1—COMPARISON OF CONTAMINANTS IN CLEAN WOOD/BIOMASS AND PROCESSED C&D WOOD^{26 27 28}—Continued

Contaminant	Clean Wood/Biomass	Processed C&D wood			
	Range	# samples	Average	90% UPL	Maximum
Lead	ND—340	n = 224	53.9	136	482
Mercury	ND—1.1	n = 180	0.1	0.16	0.7
Chlorine	ND—5400	n = 173	809	1567	3521
Fluorine	ND—300	n = 86	45.9	139	313
Sulfur	ND—8700	n = 183	1300	2200	7300
Formaldehyde	1.6—27	n = 45	47.6	104.2	176.8
Pentachlorophenol	ND	n = 21	19.7	N/A	126
Contaminants Less Likely to be Present in C&D Debris					
Antimony	ND—26	n = 50	2.6	7.1	16.6
Beryllium	ND—10	n = 50	0.1	0.23	0.3
Cadmium	ND—17	n = 107	0.3	0.53	1.3
Cobalt	ND—213	n = 50	1.1	2.1	3.5
Manganese	ND—15800	n = 50	78.8	115	180
Nickel	ND—540	n = 50	4.0	8.6	27.4
Selenium	ND—9	n = 43	0.4	1.0	1.3
Nitrogen	200—39500	n = 75	3900	8000	12600

With the exception of four contaminants—fluorine, lead, formaldehyde and pentachlorophenol, every sample of processed C&D wood’s contaminant levels was well within the range of clean wood and biomass materials. With respect to these four contaminants:

- Fluorine: While only one sample out of 45 samples of processed C&D wood exceed the range for fluorine in clean wood and biomass, the Agency still considers fluorine to be at levels comparable to those found in clean wood and biomass since this lone sample is present within a small acceptable range (i.e., 313 ppm is comparable to 300 ppm).^{29 30}
- Lead: Despite efforts by C&D processing facilities to remove lead, the

data demonstrate that some processing facilities do a better job than others, with isolated samples from Massachusetts reaching 407 and 437 ppm lead, and one of seven samples from Wisconsin reaching 482 ppm lead. While most of the 224 samples detected lead within the range found in clean wood and biomass materials (ND—340 ppm), it is important to recognize that each high sample could represent a large amount of processed C&D wood produced by an outlier facility. Accordingly, an overly broad categorical non-waste listing could include processed C&D wood from facilities where the final product consistently contains high lead levels, amounts that would not be considered a normal part of clean wood or biomass. In this instance, one facility in Massachusetts provided a composite sample for each of seven days, and two out the seven samples exceeded the range of lead values found in clean wood and biomass. That could mean more than 28 percent of the processed C&D wood produced by that facility exceeds lead levels found in clean wood and biomass. C&D processing facilities have options for minimizing lead concentrations in the processed C&D wood they produce, and information submitted with the contaminant dataset indicates that the two facilities (one in Massachusetts, the other in Wisconsin) exhibiting the highest lead levels shared similar lead minimization strategies. Although both facilities accept painted wood, neither uses X-ray Fluorescence (XRF) analyzers to detect and remove lead-based painted wood. Nor do they require documentation of a building inspection that includes testing for lead-

based paint. By comparison, the Washington facility included in the dataset requires documentation of XRF testing before accepting demolition debris from a particular building, and as evidenced by a maximum lead concentration of 26 ppm, lead concentrations in the processed C&D wood it burns tested lower than for any other facility in the dataset. The Minnesota facility included in the dataset does not accept painted wood, and as evidenced by a maximum lead concentration of 110 ppm, lead concentrations in the processed C&D wood it burns are also well within the range of clean wood and biomass materials. Both the Massachusetts facility and the Wisconsin facility relied solely on removing “fines” to control lead levels. Fines are small-sized particles that may contain relatively high concentrations of contaminants, and facilities can remove them before and after shredding via screens or flotation. EPA does not dispute that the removal of fine particles can reduce the levels of lead and other contaminants, particularly for C&D processing facilities using negative sorting. Without additional measures, however, this strategy does not appear to remove sufficient lead to transform the C&D debris into a product fuel in all cases that would warrant processed C&D wood being categorically listed as a non-waste fuel. As a result, the Agency is proposing conditions related to lead removal as part of the categorical listing for processed C&D wood. Specifically, EPA is proposing the following conditions:

- Facilities using positive sorting must either: (1) Exclude painted wood

²⁶ Sources: Clean Wood/Biomass ranges taken from a combination of EPA data and literature sources, as presented in EPA document *Contaminant Concentrations in Traditional Fuels: Tables for Comparison*, November 29, 2011, available at www.epa.gov/epawaste/nonhaz/define/index.htm. Processed C&D Wood data from April 26, 2013, submitted by Susan Bodine on behalf of BPA and CMRA.

²⁷ All units expressed in parts per million (ppm) on a dry weight basis.

²⁸ Upper Prediction Limit (UPL) calculations were made by commenters using EPA’s ProUCL software, using either a lognormal distribution or nonparametric statistics, as appropriate.

²⁹ 76 FR 15523–24, March 21, 2011.

³⁰ In addition to determining that the one sample of fluorine is within a small acceptable range, one can consider that the Upper Prediction Limit (UPL) for fluorine in processed C&D wood, when calculated at a 90 percent confidence level based on all 45 samples (139 ppm), is well within the range of clean wood and biomass materials. The UPL taken at a 90 percent confidence level yields a number (i.e., 139 ppm), and in the context of analyzing contaminant samples, persons can be confident that the next sample taken will be at or below that number 90 percent of the time.

via the sorting process by selecting only unpainted wood from incoming C&D debris for further processing, (2) use XRF to ensure that painted wood included in the final product fuel does not contain lead-based paint, or (3) require documentation that a building has been tested for and does not include lead-based paint before accepting demolition debris from that building.

○ Facilities using negative sorting must remove fine particles, which may include asbestos fibers and other contaminants in addition to lead, and they must also either: (1) remove painted wood via the sorting process, (2) use XRF to detect and remove lead-painted wood, or (3) require documentation that a building has been tested for and does not include lead-based paint before accepting demolition debris from that building.

The Agency believes, based on the available information, that facilities complying with these conditions would produce processed C&D wood that contains lead at levels comparable to those in clean wood and biomass.

- **Pentachlorophenol:** The presence of pentachlorophenol in some processed C&D wood results from processors either choosing to include industrial wood products treated with pentachlorophenol in their product fuel (in the case of positive sorting) or from processors not removing those same industrial wood products from C&D debris (in the case of negative sorting) prior to the final grinding step. EPA restricted the use and sale of pentachlorophenol in 1987, with no registered residential uses allowed for the past 26 years. The Agency believes that the pentachlorophenol concentrations in processed C&D wood are a direct result of easily identified wood products, predominantly utility poles, that processing facilities can choose to exclude or remove prior to grinding recovered C&D wood.³¹ Therefore, under the regulatory conditions proposed in today's rule, processing facilities must exclude or remove these known sources of pentachlorophenol from their final product fuel for it to be considered a categorical non-waste fuel.

- **Formaldehyde:** For C&D debris processed pursuant to best management practices, inclusive of the regulatory conditions in today's proposal, formaldehyde (present in concentrations as high as 176.8 ppm versus 27 ppm in clean wood/biomass) is the only

remaining contaminant that raises questions as to whether it meets the contaminant legitimacy criterion. Although the situation appears similar to the categorical non-waste listing for resinated wood in section 241.4(a)(2), details surrounding use of the two NHSMs as fuel are not the same. In the case of resinated wood, as defined in section 241.2, the Agency determined that energy recovered from the combustion of manufacturing process residues and off-specification resinated wood is integrally tied to the industrial production process. The equivalent for C&D wood would be sawmills reliant on recovering energy from sawdust and off-specification lumber to power the construction lumber production process. Sawmills may do this, but that is not the scenario commenters have described and the Agency is evaluating.

While EPA disagrees with petitioners' claims that resinated wood components in C&D debris are categorical non-wastes and the corollary that formaldehyde concentrations are therefore irrelevant, the Agency agrees that additional factors are worth considering in determining whether to propose to list processed C&D wood categorically as a non-waste fuel. First, formaldehyde concentrations in processed C&D wood may reach 176.8 ppm, but are lower than in pure resinated wood, which may reach 200 ppm. National rules developed by the CARB Composite Wood ATCM, per Public Law 111–199, will ensure that newly produced resinated wood will contain even less formaldehyde in the future by setting limits on how much formaldehyde may be released.³² Second, for many combustors, processed C&D wood scraps that include resinated wood components, actually have added value and are either selected for (in the case of positive sorting) or specifically not removed (in the case of negative sorting) because the wood has been kiln-dried prior to use in construction. Kiln-dried wood has a greater heating value than virgin wood, almost double in some cases. Kiln-dried wood also has a more consistent moisture content; an equally important benefit to combustors because a consistent fuel improves combustion efficiency and leads to reduced

³² On May 29, 2013, EPA proposed two rules to protect the public from the risks associated with exposure to formaldehyde. The proposals would implement the Formaldehyde Standards for Composite Wood Products Act (Title VI of the Toxic Substances Control Act): one will implement the Act's emission standards and the other will ensure products meet the TSCA formaldehyde emission standards. See <http://www.epa.gov/oppt/chemtest/formaldehyde/>.

emissions of particulate matter, carbon monoxide and other organic hazardous air pollutants.³³

Therefore, based on all available information, including a careful analysis of contaminant levels, the Agency is proposing to categorically list in 40 CFR 241.4(a) processed C&D wood using trained operators in accordance with best management practices and certified as such by the processor as a non-waste fuel.³⁴ After weighing the evidence, the Agency has concluded that, provided the regulatory conditions in today's proposal are met, the processing of mixed C&D debris transforms the material into a product fuel.

6. Summary and Request for Comment

EPA believes it has sufficient information to determine that C&D debris that is processed by trained operators according to best management practices is not a solid waste when used as a fuel, provided those practices meet the criteria proposed today. The Agency invites comment on this proposed categorical non-waste determination, and specifically on the following items:

Processing Techniques for lead and pentachlorophenol. We request comment on the efficacy of specific processing techniques related to lead referenced in today's proposal, as well as the feasibility of reducing pentachlorophenol concentrations in processed C&D wood by excluding or removing utility poles and other industrial wood products known to be treated with the chemical.

Formaldehyde levels. The Agency seeks comment on the decision to balance elevated formaldehyde levels with the greater heating value and more consistent moisture content that resinated wood components lend to processed C&D wood, rather than specifically requiring that resinated wood be excluded or removed from C&D debris as part of the best management practices.³⁵ Any additional factors that

³³ At this time, the Agency is not requiring resinated wood to be excluded or removed from C&D debris as part of best management practices, but is requesting comment on the decision to balance elevated formaldehyde levels with greater heating value and consistent moisture content. See Section 6. *Summary and Request for Comments*.

³⁴ The categorical listing proposed in this rule would allow material to be considered clean biomass without having to test each batch of processed wood for contaminant levels. Instead, the material could be considered clean biomass if certain practices are followed, as described in the rule.

³⁵ Where any one of the legitimacy criteria in § 241.3(d)(1) is not met, "other relevant factors" may be considered by the Administrator when granting or denying a non-waste determination. See § 241.4(b)(5)(ii).

³¹ Based on discussions with plant staff during an EPA tour of Industrial Disposal Services, Inc. Broad Run Recycling facility in Manassas, Virginia on May 23, 2013. The facility processes discarded C&D wood into a product fuel.

would be appropriate to consider are welcome.

CCA-treated wood. As proposed, CCA-treated wood is to be excluded or removed from C&D debris. Although the data submitted to the Agency indicates that arsenic and chromium concentrations in processed C&D wood are comparable to levels found in traditional fuels, there is some concern that because a majority of CCA-treated wood is still in use, we will see an increase in the amount of CCA-treated wood in C&D debris. Currently, CCA-treated wood can represent up to 30% of the C&D wood waste stream.³⁶ The concern is further compounded by the reality that visual identification of CCA-treated wood is at times very difficult, especially when the wood is weathered, dirty, painted, or if the wood is characterized by low retention levels.³⁷ One pilot study conducted in the state of Florida showed that visual sorting of CCA-treated wood at three different facilities produced differing results of success. The two facilities with the greatest success, which correctly identified 89% and 90% of the pre-sorted wood as untreated wood, had provided extensive training to its employees. The third facility correctly identified 60% as untreated wood. Given the variability in visually identifying untreated versus treated wood, augmenting technologies have been developed to detect the presence of arsenic, copper, and chromium, as well as other contaminants. Studies have concluded that the use of stains (e.g., PAN Indicator Stain)³⁸ and X-ray Florescence (XRF) technology are the most promising technologies, with chemical stains being suitable for sorting small quantities of wood and XRF technology being better suited for sorting large quantities of wood.

Again, the Agency's concern is based on anticipated increases of CCA-treated wood in C&D debris, as well as the accuracy of visual sorting among C&D processors. Therefore, the Agency requests comment on the viability of either requiring, as best management practices, C&D processors to implement formal training programs that emphasize

sorting of treated wood from untreated wood³⁹ or the use of XRF technology to provide greater certainty that CCA-treated wood is removed from the processed C&D wood.

Disaster Debris. The definition for C&D wood as proposed does not include disaster debris. The Agency has defined "clean cellulosic biomass" to include clean wood found in disaster debris.⁴⁰ However, disaster debris wood that is mixed with contaminated materials (e.g., lead-based painted wood, asbestos containing materials, etc.) has not been specifically addressed. The Agency notes that management of disaster debris is more expedited and less controlled and thus, prone to include contaminants that might otherwise be sorted out prior to processing.⁴¹ Despite these concerns, the Agency requests comment on the appropriateness of including wood that is recovered from disaster debris, but that is mixed with other contaminated materials prior to arrival at the processing facility, as processed C&D wood and eligible for the categorical non-waste listing. Commenters should provide any data or information that demonstrates mixed disaster debris wood, once processed, produces wood that contains contaminants comparable to or lower than biomass and virgin wood. Further, whether other conditions imposed by contingency plans, for example, can facilitate the removal of contaminated material found in disaster debris.

Trained operators. The proposed best management practices require sorting by "trained operators" to remove or exclude all non-wood debris, certain treated wood, and lead-based painted wood from the final product fuel. The Agency believes that operators who are trained to sort C&D debris, especially to recognize treated wood, play an important role in reducing contaminant levels in the final fuel product. Therefore, we request comment on whether the Agency should require that C&D processors have formal training programs in place as part of the best management practices, as well as whether processors would be required to keep records as a condition of the

categorical listing to demonstrate that such operators have been formally trained. The Agency is not prescribing what a training program could include at this time. Certain factors such as where the C&D debris originates from and the amount of sorting prior to arrival at the processing facility can influence the extent and type of contaminated material arriving at the processing facility. Thus, the Agency also seeks comment on training program requirements that would be flexible enough to address the variability of the incoming C&D debris, but that provide added assurance that C&D processing facilities are producing a non-waste fuel product with contaminants that are no greater than clean wood/biomass.

Written Certification. As proposed, the combustor would need to obtain a written certification from the C&D processor that the C&D wood has been processed by trained operators in accordance with best management practices. The written certification could take the form of a contract, purchase agreement, or other document that requires the supplier to process the C&D wood according to combustor specifications and best management practices. It is the Agency's understanding that purchase agreements and contracts are common between a processor/supplier and combustor. Thus, we request comment on whether such agreements and contracts are sufficient documentation (i.e., can serve as the written certification) or if a written certification statement developed specifically to address the requirements in this proposal would be clearer and more effective. We would note that the existing record keeping requirements for combustors that combust NHSMs as fuels listed under section 241.4,⁴² the purchase agreement, contract, or other document that would meet the written certification requirement would be considered a "record" which satisfies the record keeping requirements of sections 60.2740(u) (Emissions Guidelines) and 60.2175(w) (New Source Performance Standards) for CISWI units and sections 63.11225(c)(2)(ii) for area source boilers and 63.7555(d)(2) for major source boilers.⁴³

⁴² Section 241.4 lists the categorical or "Non-waste determinations for specific non-hazardous secondary materials when used as a fuel."

⁴³ These sections state that for units combusting NHSM as fuel per § 241.4, you must keep records documenting that the material is listed as a non-waste under § 241.4(a).

³⁶ Fattah, Hassan Abdel, et al. "Online Sorting of Recovered Wood Waste Using Automated X-Ray Technology" Final Report; November 30, 2009. See p. 2.

³⁷ Blassino, Monika, et al. "Methods to control Fuel Quality at Wood Burning Facilities."

³⁸ PAN stands for the chemical name of 1-(2-pyridylazo)-2-naphthol, an orange-red solid with a molecular formula C₁₅H₁₁N₃O. It is used to determine the presence of almost all metals excluding alkali metals. The stain is not specific to arsenic within CCA. It reacts with the copper, so that wood treated with any copper-based preservative will also test positive using this stain.

³⁹ The Agency is proposing sorting by "trained operators" under best management practices. Here, the Agency requests comment regarding whether training programs should include a component specific to sorting treated wood from untreated wood.

⁴⁰ 76 FR 15478 (March 21, 2011); codified at § 241.2.

⁴¹ Management of disaster debris can involve significantly greater volumes. For example, prior to the 1994 Northridge earthquake in Los Angeles, one local company processed 150 tons of C&D debris per day. After the earthquake, the city picked up as much as 10,000 tons of C&D debris per day.

B. Paper Recycling Residuals (PRRs)

1. Detailed Description of PRRs

Paper recycling residuals (PRRs) are a co-product of the paper recycling manufacturing process and are generated on-site at paper recycling mills. The feedstock used in paper recycling mills, where PRRs are generated, is post-consumer paper, such as magazines, newspaper, office paper, and old corrugated containers obtained through various commercial and residential recycling programs or purchased from retail establishments.⁴⁴ However, some paper recycling mills' feedstock is limited solely to old corrugated containers. The paper recycling process generates two materials: (1) Recovered fibers used to make new paper and paperboard products; and (2) processing residuals (or PRRs) that are not suitable for making new paper products, but are landfilled, sent for metals recycling, or used as a fuel.⁴⁵ Today's proposal considers only the processing residuals, or "PRRs," that primarily consist of unsuitable wood fibers that are used as a fuel.⁴⁶ See Section V.B.4 (*Rationale for Proposed Listing*) below for a more detailed description of how and where PRRs are generated in the paper recycling process.

Current data indicates that paper recycling mills generate between 450,000 and 600,000 tons of PRRs per year. Approximately 30 percent of the PRRs (135,000 to 180,000 tons) generated are burned for their fuel value at 15 to 20 different paper recycling mills.⁴⁷ Although there are over 100 paper recycling mills across the U.S., the majority of mills' boilers use natural gas and cannot burn solid fuels. As a result, PRRs generated in their processes generally are landfilled. At any particular paper recycling mill capable of burning PRRs (i.e., their boilers burn solid fuel), between 55 to 100 percent of the PRRs generated on-site are burned and may represent between 20 to 25 percent of the total solid fuel burned in their solid fuel boilers. Of the 30 percent of PRRs burned as fuel, no more than 5

percent is burned off-site.⁴⁸ For the PRRs burned off-site, they appear to be used to supplement other fuels burned at either a commercial cogeneration plant⁴⁹ or commercial biomass gasification plant.⁵⁰

The Agency previously understood PRRs to be a term industry commonly used to refer to Old Corrugated Container (OCC) rejects.⁵¹ Since publication of the March 2011 NHSM final rule and the December 23, 2011 proposal, however, the Agency has received comments more appropriately identifying OCC rejects as a subset of the PRR universe. Specifically, OCC rejects refers to only one grade of recovered fiber, whereas PRRs encompass residuals from all types of fiber grades. Therefore, in today's proposal, the Agency is including OCC rejects within the broader PRR universe in a proposed categorical non-waste determination.

2. OCC Rejects Under Current NHSM Rules

a. March 2011 NHSM Final Rule

In the March 2011 NHSM final rule, EPA disagreed with those commenters who argued that OCC rejects should be considered a traditional or alternative fuel. On the other hand, we believed that OCC rejects are not discarded when used within the control of the generator, such as at pulp and paper mills, since these NHSMs are part of the industrial process. In addition, we stated that the data submitted during the comment period would seem to suggest that these materials would or could meet the legitimacy criteria. For example, the data indicated that the contaminant levels in these materials are comparable to, if not less than, those in traditional fuels used at pulp and paper mills. With respect to the meaningful heating value criterion, we noted that, although the Btu value of OCC rejects, as fired, is lower than 5,000 Btu/lb, it can still meet this criterion if it can be demonstrated

⁴⁸ *Generation, Management, and Processing of Paper Processing Residuals*. Industrial Economics Corporation, October 26, 2012. This is posted within the docket for today's rulemaking (Docket: EPA-HQ-RCRA-2013-0110).

⁴⁹ A cogeneration plant is one that generates electricity and useful heat (instead of releasing it into the environment via cooling towers, for example) for heating purposes either on-site or for use nearby.

⁵⁰ National Council for Air and Stream Improvement, Inc. Technical Bulletin (TB) No. 806, "Beneficial Use of Secondary Fiber Rejects," pp. 10-11. See attachment to AF&PA Comments to Docket, August 3, 2010 (docket document ID number: EPA-HQ-RCRA-2008-0329-0871).

⁵¹ Another term industry often uses when referring to OCC rejects is "recycling process residuals" which was identified in the March 2011 final rule (76 FR 15486).

that the combustion unit can cost-effectively recover energy from these materials. Last, the information submitted also demonstrated that OCC rejects are managed as a valuable commodity as they are managed in the same manner as the analogous fuel—bark (76 FR 15456, March 21, 2011 (pages 15486-7)). Therefore, the Agency generally concluded that OCC rejects burned as a fuel within the control of the generator were not solid wastes.

b. February 2013 NHSM Final Rule

Under the February 2013 final rule, we reiterated our belief that paper recycling residuals (which include OCC rejects) are not discarded when burned under the control of the generator, since these non-hazardous secondary materials are part of the industrial process. Also, since publication of the March 2011 final rule and during finalization of the February 2013 final rule, we received additional information regarding the cost effectiveness of PRRs used as a fuel, including the amount of PRRs replacing traditional fuels at paper recycling mills and percentages of residuals generated that are combusted as a fuel.⁵² Based upon the information received at that time, we stated that we believed it supported the categorical listing of PRRs as a non-waste fuel burned on-site. On the other hand, for PRRs transferred off-site for use as a fuel, we requested information regarding how and where they are burned and whether they are managed as a valuable commodity. We also stated that if information is submitted that supports off-site use as a fuel, the Agency may include those PRRs in a subsequent rulemaking.⁵³

3. Scope of Proposed Categorical Non-Waste Listing for PRRs

PRRs generated during the paper recycling manufacturing process vary in composition; however, the unsuitable fibers portion make up the majority of residual material that is used as a fuel. Although PRRs are generated at more than 100 paper recycling mills, only between 15 to 20 mills can burn them as a fuel because their boilers are designed to burn solid fuels. The majority of paper recycling mills' cannot burn solid fuels because their boilers are designed to burn natural gas, and thus, usually send their PRRs to landfills.

As stated in the preceding section, additional data and information submitted to the Agency by the industry

⁵² *Generation, Management, and Processing of Paper Processing Residuals*. Industrial Economics Corporation, October 26, 2012.

⁵³ 78 FR 9111, February 7, 2013 (page 9173).

⁴⁴ See Attachment 4, page 1, footnote 2 of AF&PA's Comments to Docket: EPA-HQ-RCRA-2008-0329-0871.

⁴⁵ Because the incoming feedstock may contain a number of other materials, including metals, metals may also be recovered and sent for recycling.

⁴⁶ Although we consider PRRs to be "primarily" composed of unsuitable fibers, PRRs may also include small amounts of solids and non-fiber packaging materials as described by the listing of contaminants, when burned as fuel.

⁴⁷ *Generation, Management, and Processing of Paper Processing Residuals*. Industrial Economics Corporation, October 26, 2012.

demonstrates that PRRs are not discarded when used as a fuel on-site or within the control of the generator. Further, this data and information indicates that all three legitimacy criteria are met. Therefore, the Agency is proposing to categorically list PRRs as a non-waste fuel for those paper recycling mills whose on-site boilers are designed to burn solid fuels. The rationale for this proposal is discussed in the sections below.

4. Rationale for Proposed Listing

a. Paper Recycling Process

The level of contamination in recovered paper and paperboard products can range from minimal to severe depending upon its original manufacture, its finishing and converting operations, and its subsequent use and collection. Accordingly, the type, number, and sequence of processing equipment vary by mill.⁵⁴ Despite the potential differences between mills, the paper recycling manufacturing process may be grouped generally, into three steps, for purposes of identifying where residuals are generated and, thus, when they are discarded or used to produce a product fuel.

In the first step of the paper recycling manufacturing process, bales of the incoming feedstock enter a pulper where the paper and fiber are wetted and dispersed. A “debris rope” or “ragger” continuously withdraws strings, wires, and rags that could otherwise damage the processing equipment. Recovered metals may be sold to metals recovery facilities, but other materials removed by the ragger are landfilled because they produce a heterogeneous mixture.

In the second step of the paper recycling manufacturing process, materials that remain in the pulper can either pass to a junk tower for removal of heavy materials and continue to a drum screen for removal of lighter materials; or go directly to coarse screens. For those materials that go to the coarse screens, the resulting rejects may pass through an air separator and/or a high efficiency cyclone, which further removes materials based on size, shape and density, such as plastic and unsuitable paper fibers (i.e., wet strength and short wood fibers), which make-up the largest portion of PRRs destined for fuel use. These PRRs may

be consolidated with those generated from the junk tower and drum screen, and sent across a dewatering screen or a screw or ram press to improve both ease of handling and heating value.

In the final step of the paper recycling manufacturing process, a series of fine screens remove any remaining material that cannot be used to make paper or paperboard products. These rejected materials include unusable paper fiber fines, clays, starches, waxes and adhesives, other filler and coating additives, and dyes and inks. During this step, reject materials may either pass along to the wastewater treatment system or become part of the PRR stream and used as a fuel. For example, reject materials that are dispersed and small, such as dyes and inks, waxes, and coating adhesives generated from recovered magazines and other papers, will not be removed by fine screens and therefore, enter the wastewater treatment system. In contrast, light reject material generated from recovered corrugated containers is captured in fine screens and can be used as a fuel.⁵⁵ These PRRs would then be consolidated with the PRRs generated in the preceding step before being conveyed to the combustion source where they are blended with traditional fuels and fed to the combustor.

Thus, PRRs are generated at various steps of the paper recycling manufacturing process, with the second step producing the bulk of PRRs (i.e., unsuitable fibers) destined for use as a fuel. While the discussion above provides an overall description of the paper recycling process itself, it also demonstrates how PRRs (and other residuals) are generated throughout the process. By virtue of the processing steps conducted throughout the paper recycling manufacturing process, PRRs burned as a fuel require minimal additional processing themselves prior to their use as fuel. For the most part, all that is required after screening is removal of moisture to increase the Btu value. Removal of moisture can range from simply allowing PRRs to drain freely (e.g., for coarse and heavy PRRs) to sending them through a press (e.g., for smaller and compressible PRRs).

In determining whether PRRs used as a fuel are more product-like than waste-like, we consider the following attributes:

- PRRs that are burned as a fuel are never discarded.
- For paper recycling mills that can burn PRRs, they burn a significant

amount of what they generate on-site: 55%–100%.

- PRRs are a co-product of the paper recycling manufacturing process and are used to replace traditional fuels by as much as 25%.

Accordingly, PRRs are more product-like than waste-like.

b. Legitimacy Criteria

As discussed above, EPA considers whether the NHSMs meet the legitimacy criteria when deciding whether to list an NHSM categorically as a non-waste fuel. If the NHSM meets the legitimacy criteria, the Agency can list the material categorically as a non-waste fuel and those who use the material would not have to evaluate and document the regulatory status of the material on a case-by-case basis. The three legitimacy criteria to be evaluated are: (1) The NHSM must be managed as a valuable commodity; (2) the NHSM must have a meaningful heating value and be used as a fuel in a combustion unit to recover energy; and (3) the NHSM must have contaminants or groups of contaminants at levels comparable to or less than those in the traditional fuel the unit is designed to burn.⁵⁶

i. Managed as a Valuable Commodity

Regarding the first legitimacy criterion, PRRs that are utilized as a fuel are managed similarly to traditional fuels that are burned on-site at the paper recycling mill, such as hogged wood, other clean biomass, or coal. Some paper recycling mills store PRRs in containers (i.e., from the container, PRRs can be fed directly to the boiler) or convey them to a storage pile of traditional solid fuels where they are comingled prior to burning, while other paper recycling mills convey PRRs directly to the fuel feed systems. This demonstrates that PRRs are handled promptly, such that after processing, they are fed directly to the boiler or when not used immediately, they are managed in containers and storage piles along with other traditional fuels used on-site and thus, are managed as a valuable commodity.

ii. Meaningful Heating Value and Used as a Fuel To Recover Energy

With respect to the second legitimacy criterion, PRRs, as fired, average 3,700 Btu/lb (or on a dry basis, averages 9,100 Btu/lb).⁵⁷ While this is lower than the

⁵⁶ We would note that even if the NHSM does not meet one or more of the legitimacy criteria, the Agency could still propose to list a NHSM categorically as a non-waste fuel by balancing the legitimacy criteria with other relevant factors. (See 78 FR 9156, February 7, 2013.)

⁵⁷ See AF&PA Comments, p 62, to Docket document ID: EPA-HQ-RCRA-2008-0329-0871.

⁵⁴ National Council for Air and Stream Improvement, Inc. Technical Bulletin (TB) No. 806, “Beneficial Use of Secondary Fiber Rejects,” p 1. See attachment to AF&PA Comments to Docket, August 3, 2010 (document ID: EPA-HQ-RCRA-2008-0329-0871).

⁵⁵ AF&PA Technical Bulletin, Attachment 4, Recycling Process Residuals, p 2. September 10, 2009.

general guideline of 5,000 Btu/lb, as fired,⁵⁸ the Agency has previously stated that flexibility exists for facilities with energy recovery units that use NHSMs as fuels with an energy content lower than 5,000 Btu/lb, as fired. In such cases, a person may demonstrate a meaningful heating value is derived from the NHSM if the energy recovery unit can cost-effectively recover meaningful energy from the NHSM used as fuels. Factors that may be considered by the Agency in determining that a combustion unit cost-effectively recovers energy from NHSMs include, but are not limited to: whether the facility encounters a cost savings due to not having to purchase significant amounts of traditional fuels they otherwise would need; whether they would purchase the NHSM to use as a fuel; whether the NHSM can self-sustain combustion; and/or whether the operation produces energy that is sold for a profit.⁵⁹

While some of these specific factors are relevant with respect to the combustion of PRRs,⁶⁰ additional factors beyond those listed may also demonstrate that a combustion unit can cost-effectively recover energy. In the

case of PRRs, we would note that the industry has argued that paper recycling mills' boilers can cost effectively recover energy from PRRs, because of the boiler design itself. Specifically, a trade organization representing paper recycling mills has indicated that the mills' solid fuel boilers are designed to burn wet fuels, with each mill optimizing its operation around boiler design. Typical boilers used include stoker fired and fluidized bed combustion, which often have over-fire and/or under-grate air that assists in the efficient burning of wetter fuels. This allows paper recycling mills to burn clean cellulosic biomass fuels, such as hog fuel and bark, which is the primary fuel, as well as PRRs, that have varying degrees of moisture content. In fact, the industry has argued that if the material being fed to the boiler is too dry, the combustion temperature can become too hot, requiring operational adjustments. Consistently wet materials are handled well in these boilers, leading to fewer temperature swings and minimized boiler tuning adjustments. They also argue that PRRs are analogous to the primary fuels—hog fuel and bark—used

in solid fuel boilers at paper recycling mills in that they both have high moisture content, usually >40%, and can have Btu values below 5000 Btu/lb, as fired. However, PRRs can also have Btu values higher than 5,000 Btu/lb, depending upon the amount of moisture that has been removed (i.e., whether simply draining freely versus pressed), amount of solids, fiber content, presence of non-fiber packing materials, and combustion conditions necessary for the effective operation of the boilers.⁶¹ Therefore, based on all the available information, including the fact that PRRs are primarily wood fibers, the Agency believes that PRRs meets the meaningful heating value legitimacy criterion, and that they are burned as a fuel to specifically recovery energy.

iii. Contaminants Comparable to or Lower Than Traditional Fuels

For the third legitimacy criterion, we have conducted an expanded (i.e., previous rules only considered OCC rejects) contaminant comparison to capture data that is representative of all PRR fuel types within EPA's Boiler MACT Database.⁶² See Table 2.

TABLE 2—COMPARISON OF CONTAMINANTS IN PAPER RECYCLING RESIDUALS (PRRs) AND TRADITIONAL FUELS

Contaminants ^a	Clean wood/ biomass	Coal ^b	PRRs ^{c,d}
	Range		
Group 1:			
Arsenic	ND-298	ND-174	0-17.7
Chromium	ND-340	ND-168	<0.17-26.9
Lead	ND-340	ND-148	<0.10-21.1
Mercury ^e	ND-1.1	ND-3.1	ND-0.0724
Chlorine	ND-5400	ND-9,080	<9.8-7310
Sulfur	ND-8700	740-61,300	237-2500
Group 2:			
Antimony	ND-26	ND-10	0.07-0.9
Beryllium	ND-10	ND-206	0.005-0.329
Cadmium	ND-17	ND-19	0.03-7.1
Cobalt	ND-213	ND-30	1.05-1.99
Manganese	ND-15,800	ND-512	<0.10-21.1
Nickel	ND-540	ND-730	<0.27-25
Selenium ^f	ND-9	ND-74.3	ND-3.29
Fluorine ^g	ND-300	ND-178	<17-26

^a All units expressed in parts per million (ppm) on a dry weight basis.

^b Coal and Biomass data taken from EPA document *Contaminant Concentrations in Traditional Fuels: Tables for Comparison*, November 29, 2011, available at www.epa.gov/epawaste/nonhaz/define/index.htm. Refer to document for footnotes and sources of the data.

^c December 2011 boiler database—Boiler Reconsideration Proposal Databases: Emissions Database for Boilers and Process Heaters Containing Stack Test, CEM, & Fuel Analysis Data Reported under ICR No. 2286.01 & ICR No. 2286.03 (version 7); <http://epa.gov/ttn/atw/boiler/boilerpg.html>. Data presented is for paper manufacturing facilities with NAICS code #322 and where fuel type indicates it refers to the repulped paper fibers that are used as fuels and include: "Dewatered combustible residues," "hydro pulper refuse," "OCC rejects," "recycle fiber light-weight rejects," and "recycled fiber."

^d CAA 112 Hazardous Air Pollutant (HAP) compounds (e.g., benzene, PAHs) data was not collected in this data set. HAP compounds may be present.

⁵⁸ 76 FR 15522.

⁵⁹ 76 FR 15523.

⁶⁰ For example, the industry has provided information indicating that: if they were to cease burning PRRs, replacement fuel, such as biomass or coal would need to be purchased at a cost of over

\$8 million and several boilers burning PRRs produce electricity for on-site use, displacing the need to purchase electricity from the local utility. See "Supplemental Information to Support the Listing of Paper Recycling Residuals (PRR) As a Non-waste Fuel under section 241.1" (December 12, 2012).

⁶¹ See "AF&PA-AWC Responses to EPA's Questions on PRR and Railroad Ties (May 2013)."

⁶² In response to the ANPRM, commenters submitted data for OCC rejects, which generally indicated that OCC rejects would or could meet the contaminant criterion.

^eOther PRR sample results indicate mercury was non-detect at 0.1 ppm; therefore, some samples could have been between the highest recorded value of 0.0724 ppm and the non-detect limit of 0.1 ppm.

^fOther PRR sample results indicate that selenium was non-detect at 7 ppm; therefore, some samples could have been between the highest recorded value of 3.29 ppm and the non-detect limit of 7 ppm.

^gFluorine was not detected in any samples; the highest non-detect level is listed.

We compared the contaminant concentrations of those constituents found in Table 2 in PRRs to the levels found in coal and biomass, since both of these traditional fuels can be burned in boilers at paper recycling mills. Data indicate that PRRs meet the contaminant legitimacy criterion. The only reported instance of PRRs containing a contaminant at levels approaching the highest levels in coal and biomass is a chlorine concentration at a mill burning OCC rejects. However, the highest reported value for chlorine in PRRs was 7,310 ppm, which is still below the highest reported value for chlorine in coal (9,080 ppm). Therefore, the contaminant concentrations for these contaminants are comparable to the traditional fuels that the boilers are designed to burn.

With regard to organic HAP present in PRRs, there does not appear to be any data available on the concentration of these contaminants in PRRs. Limited data has been published, however, on TCLP extracts of OCC rejects that include several organic HAPs. With the exception of toluene, which was found at trace levels ranging from <0.001 to 0.004 mg/L, no other HAP were detected in the TCLP extracts for OCC rejects.⁶³ For purposes of comparability, a total constituent analysis for toluene would yield a concentration of up to 0.08 mg/L (or 0.08 ppm), assuming worst case conditions, which is well below the concentration found in coal at 8.6–56 ppm.^{64 65} Likewise, we would expect

similar results from the broader universe of PRRs, since the processing steps that generate PRRs would be equivalent to or more than those that generate only OCC rejects (i.e., where the feedstock is limited to OCCs), resulting in potentially fewer contaminants.

5. Summary and Request for Comment

PRRs are generated from the recycling of recovered paper and paperboard products, which consists of several processing steps. These processing steps remove contaminants and sort PRRs by passing them through a series of screens and cyclones, and increase their Btu value in preparation for burning. This fuel product meets the legitimacy criteria as described above. Based on current information, the Agency believes that PRRs are a non-waste fuel, provided that such units are located on-site and the boilers that are used are designed to burn solid fuels. The Agency invites comment on this proposed categorical non-waste determination, which would categorically list PRRs as a non-waste fuel in section 241.4(a) and the following specific items:

Meaningful Heating Value. We request comment on the meaningful heating value determination, as well as information regarding the percentages of non-fiber materials (e.g., polystyrene foam, polyethylene film, other plastics, waxes and adhesives, dyes and inks, clays, starches, and other filler and coating additives, etc.) that typically make-up PRRs. This information may be useful in understanding the variability of the PRR's heating value, since PRRs that contain a larger portion of wood fibers could be expected to have a higher heating value.

Other discarded materials. In addition, although the data provided in the boiler database regarding the level of contaminants in the PRRs indicates that they meet the contaminant legitimacy criterion, evaluations conducted for the development of the boiler database suggested that, in a few cases, OCC rejects used as fuel on-site contain other discarded materials. For example, some paper recycling mills may accept cardboard containers from off-site that have not been completely emptied of

their contents or otherwise are contaminated with foreign materials. The Agency is interested in receiving information regarding how common this practice is, the composition of the contents/materials, any precautions taken to ensure that the contents/materials do not contribute to unacceptable contaminant concentrations, and whether any additional conditions should be imposed to ensure that such cardboard containers have been emptied. In other words, any remaining contents/materials should only be incidental.

PRRs burned off-site. Finally, the Agency is considering whether to expand the categorical listing to include PRRs that are burned as a fuel product off-site (i.e., in cases where the generating mill does not have a boiler designed to burn solid fuels) at other paper recycling mills and commercial power plants. According to earlier comments submitted on subsequent NHSM rulemakings, OCC rejects have been used as a supplemental fuel in two plants: A commercial biomass gasification plant and a commercial cogeneration plant (where OCC rejects provide 3 to 4 percent of the total fuel input at the latter plant).⁶⁶ An intermediary company takes the OCC rejects from three mills and processes them by removing large pieces of plastic, shredding, and drying the remaining residuals and delivers the OCC reject fuel to the plants.⁶⁷ Thus, contrary to what the Agency previously concluded based on the information it had at the time of the March 2011 final rule,⁶⁸ it now appears that the OCC rejects burned off-site in commercial power plants can be managed more like a non-waste fuel than a waste fuel. While the information we have generally indicates that these PRRs are managed much the same way as those

⁶³National Council for Air and Stream Improvement, Inc. Technical Bulletin (TB) No. 806, "Beneficial Use of Secondary Fiber Rejects," Appendix B, Table B1. TCLP Analysis of OCC Rejects. See attachment to AF&PA Comments to Docket, August 3, 2010 (document ID number: EPA-HQ-RCRA-2008-0329-0871).

⁶⁴Section 1.2 of Method 1311 (Toxicity Characteristic Leaching Procedure) allows for a total constituent analysis in lieu of a TCLP analysis. That is, the Agency allows calculating a solid phase's maximum theoretical concentration expected in a TCLP extract by dividing a sample's total constituent concentration by 20, representing 20:1 liquid-to-solid ratio (by weight) employed in the TCLP procedure. See http://www.epa.gov/osw/hazard/testmethods/faq/faq_tclp.htm. While leaching extract concentrations do not reflect total constituent concentrations, multiplying the extract concentration (0.004 ppm) by 20 provides the minimum total concentration in the waste. However, because toluene is somewhat soluble in water (515 mg/L at 20° C), the leaching extract concentration multiplied by 20, is for this constituent, a reasonable approximation of the total toluene concentration. Water solubility data can be found at: http://www.epa.gov/chemfact/s_toluene.txt.

⁶⁵*Concentrations in Traditional Fuels: Tables for Comparison*, November 29, 2011, available at www.epa.gov/epawaste/nonhaz/define/index.htm and in the docket (EPA-HQ-RCRA-2008-0329).

⁶⁶In the 2011 final NHSM rule, the agency previously believed these facilities to be municipal or commercial incinerators (76 FR 15487). Subsequent comments have identified these facilities to be commercial biomass and cogeneration plants.

⁶⁷National Council for Air and Stream Improvement, Inc. Technical Bulletin (TB) No. 806, "Beneficial Use of Secondary Fiber Rejects," pp. 10–11. See attachment to AF&PA Comments to Docket, August 3, 2010 (document ID: EPA-HQ-RCRA-2008-0329-0871).

⁶⁸The Agency had stated that limited information indicated that OCC rejects are "burned in municipal or commercial energy facilities (which appear to be municipal or commercial incinerators) and thus, would clearly indicate discard . . ." 76 FR 15487.

burned on-site, it is based on only two cases and lacks sufficient detail to determine that PRRs when sent off-site for energy recovery continue to meet the legitimacy criteria and are not discarded. Therefore, we request additional information for PRRs that are burned off-site which demonstrates how they: (1) Are managed as a valuable commodity (from point of generation at the paper recycling mill to insertion at the off-site combustor, to clearly show that discard is not occurring); (2) have a meaningful heating value; (3) contain contaminants at levels comparable to or lower than those in traditional fuel(s) which the combustor is designed to burn; and (4) the types of facilities that combust these PRRs.

C. Creosote-Treated Railroad Ties (CTRTs)⁶⁹

1. Detailed Description of CTRTs

Railroad ties are typically comprised of North American hardwoods that have been treated with creosote. Creosote was introduced as a wood preservative in the late 1800's to prolong the life of railroad ties. Creosote-treated wood ties remain the material of choice by railroads due to their long life, durability, cost effectiveness, and sustainability. As creosote is a by-product of coal tar distillation, and coal tar is a by-product of making coke from coal, creosote is considered a derivative of coal. The creosote component of CTRTs is also governed by the standards established by the American Wood Protection Association (AWPA). AWPA has established two blends of creosote, P1/P13 and P2.⁷⁰ Railroad ties are typically manufactured using the P2 blend that is more viscous than other blends.

Under today's proposed rule, CTRTs are railroad crossties removed from service and processed prior to being used as a fuel. Approximately 17 million crossties are removed from service each year. About one third of the removed CTRTs are used for landscaping, with the majority of the

remaining two thirds used for energy recovery. Because of its high energy content, CTRTs can be used for heat and energy recovery in combustion units as a nonhazardous biomass alternative to fossil fuel.⁷¹

Most of the energy recovery with crossties is conducted through three parties: The generator of the crossties (railroad or utility); the reclamation company that sorts the crossties, and in some cases processes the material received from the generator;⁷² and the combustor as third party energy producers. Typically, ownership of the crossties are generally transferred directly from the generator to the reclamation company that sorts materials for highest value secondary uses, and then sells the products to end-users, including those combusting the material as fuel. Some reclamation companies sell CTRTs to processors who remove metal contaminants and grind the ties into chipped wood. Other reclamation companies have their own grinders, do their own contaminant removal, and can sell directly to the combusting facilities. Information submitted to the Agency indicates there are approximately 15 CTRT recovery companies in North America with industry wide revenues of \$65–75 million. Members of AF&PA report that the value of CTRTs is underscored by the approximately \$20–\$30 per ton paid for CTRTs which can sometimes be a premium price compared to certain hog fuels (untreated clean wood residues from sawmills).⁷³

After crossties are removed from service, they are transferred for sorting/processing, but in some cases, they may be temporarily stored in the railroad rights-of-way or at another location selected by the reclamation company. One information source indicated that when the crossties are temporarily stored, they are stored until their value as an alternative fuel can be realized, generally through a contract completed for transfer of ownership to the reclamation contractor or combustor.⁷⁴ This means that not all CTRTs originate from crossties removed from service in the same year; some CTRTs are processed from crossties removed from service in prior years and stored by railroads or removal/reclamation

companies until their value as a landscaping element or fuel could be realized.

Typically, reclamation companies receive CTRTs by rail. The processing of the crossties into fuel by the reclamation/processing companies involves several steps. Metals (spikes, nails, plates, etc.) are removed using a magnet. Metal removal may occur several times during the process. The crossties are then ground or shredded to a specified size depending on the particular needs of the end-use combustor, with chip size typically between 1–2 inches. This step may occur in several phases, including primary and secondary grinding, or in a single phase. Once the crossties are ground to a specific size, additional metal may be removed and there is further screening based on the particular needs of the end-use combustor. Depending on the configuration of the facility and equipment, screening may occur concurrently with grinding or at a subsequent stage. Throughout the process, a surfactant is applied to the crossties being processed to minimize dust.

Once the processing of CTRTs is complete, the CTRTs are sold directly to the end-use combustor for energy recovery. Processed CTRTs are delivered to the buyers by railcar or truck. The CTRTs are then stockpiled prior to combustion, with a typical storage timeframe ranging from a day to a week. When the CTRTs are to be burned for energy recovery, the material is then transferred from the storage location using a conveyor belt or front-end loader. The CTRTs may be combined with other biomass fuels, including hog fuel and bark. CTRTs are commonly used to provide the high BTU fuel to supplement low (and sometimes wet) BTU biomass to ensure proper combustion, often in lieu of coal or other fossil fuels.⁷⁵ The combined fuel may be further hammered and screened prior to combustion.

In general, contracts for the purchase and combustion of CTRTs include fuel specifications limiting contaminants, such as metal and precluding the receipt of wood treated with preservatives other than creosote.

2. CTRTs Under Current NHSM Rules

a. March 2011 NHSM Final Rule

The March 2011 NHSM final rule indicated that even though most creosote-treated wood is non-hazardous, the presence of hexachlorobenzene, a

⁶⁹ As noted previously, the categorical listing of CTRTs does not include other creosote-treated wood. The Agency is currently evaluating these NHSMs, based on the petition submitted by the Treated Wood Council included in the docket for today's rule.

⁷⁰ AWPA Standard P1/P13 and P2 provide specifications for coal-tar creosote used for preservative treatment of piles, poles and timber for marine, land and freshwater use. The character of the tar used, the method of distillation, and the temperature range in which the creosote fraction is collected all influence the composition of the creosote, and the composition may vary with the requirement of standard specifications. April 2010. Forest Products Laboratory, 2010 Wood Handbook, General Technical Report FPL_GTR-190. Madison, WI.

⁷¹ American Forest & Paper Association, American Wood Council—Letter to EPA Administrator, December 6, 2012.

⁷² In some cases, the reclamation company sells the crossties to a separate company for processing.

⁷³ American Forest & Paper Association, American Wood Council—Letter to EPA Administrator, December 6, 2012.

⁷⁴ M.A. Energy Resources LLC, Petition submitted to Administrator, EPA, February 2013.

⁷⁵ American Forest & Paper Association, American Wood Council—Letter to EPA Administrator, December 6, 2012.

CAA 112 HAP, as well as other HAP suggested that creosote-treated wood, including CTRTs contained contaminants at levels that were not comparable to or lower than those found in wood or coal, the fuel that creosote-treated wood would replace. In making the assessment at that time, the Agency did not consider fuel oil as a traditional fuel that CTRTs would replace. Thus, the data provided at that time indicated that combustion of creosote-treated wood may result in destruction of contaminants contained in those materials, which is an indication of incineration, a waste activity. Accordingly, creosote-treated wood, including CTRTs when burned, seemed more like a waste than a commodity, and did not appear to meet the contaminant legitimacy criterion.⁷⁶ This material, therefore, was considered a solid waste when burned and units combusting it would be subject to the section 129 CAA emission standards. The conclusions from the March 2011 rule regarding creosote-treated wood are discussed further in Section V.C.4 (Rationale for Proposed Listing) below.

b. February 2013 NHSM Final Rule

In the February, 2013 NHSM final rule, EPA noted that AF&PA and the American Wood Council submitted a letter with supporting information on December 6, 2012, seeking a categorical listing for all railroad ties combusted in any unit.⁷⁷ The letter included information regarding the amounts of railroad ties combusted each year and the value of the ties as fuel. The letter also discussed how CTRTs satisfy the legitimacy criteria, including its high Btu value.

While this information was useful, it was not sufficient for EPA to propose that CTRTs be listed categorically as a non-waste fuel. Therefore, to further inform the Agency as to whether to list CTRTs categorically as a non-waste fuel, EPA requested that additional information be provided, and indicated that if this additional information supported and supplemented the representations made in the December 2012 letter, EPA would expect to propose a categorical listing for CTRTs. The requested information and responses provided are as follows:

- *A list of industry sectors, in addition to forest product mills, that burn railroad ties for energy recovery:* One respondent claimed that a number of end-use combustors utilize CTRTs as

an alternative fuel to offset fossil fuel at all times. Such facilities use as much as 100–500 tons of CTRTs daily. The respondent also claimed to know of additional end-use combustors that utilize CTRTs occasionally based on availability and cost. Furthermore, the respondent was aware of other end-use combustors that are operationally able to utilize CTRTs as an alternative fuel to offset fossil fuel, but have chosen not to use CTRTs as a result of the current solid-waste implications associated with CTRTs. The end-use combustors that currently utilize CTRTs, both full-time and part-time, represent a variety of industry sectors, including pulp and paper manufacturing, cogeneration plants, utilities, and chemical manufacturing facilities. For the utility sector, at least 14 utilities could burn (i.e. are permitted to burn) or are burning CTRT.⁷⁸ Another respondent claimed that data⁷⁹ show that a number of forest product mills are currently using railroad ties as a fuel and that other mills are permitted to burn these materials as fuels, but have stopped using them as a fuel due to their uncertain regulatory status, as well as other economic factors (e.g. lower cost of other fuels).

- *The types of boilers (e.g., kilns, stoker boilers, circulating fluidized bed, etc.) that burn railroad ties for energy recovery:* Respondents stated that the types of units operated by those end-use combustors that utilize CTRTs as an alternative fuel include fluidized bed, traveling grate, and spreader stoker. Forest product industry boilers that used to burn railroad ties are generally one of three types: stoker, bubbling bed or fluidized bed boilers. In addition, cement kilns have combusted CTRTs.⁸⁰
- *The traditional fuels and relative amounts (e.g., startup, 30%, 100%) of these traditional fuels that could otherwise generally be burned in these types of units:*

⁷⁶ Information received subsequent to the request for data in the February 13, 2013 rule discussed above claims that 14 entities in the utility sector could burn (i.e. are permitted to burn) or are burning cross-tie derived fuel (i.e. CTRT). Of the 14 entities, 9 companies are currently firing or have fired CTRT within the past two years. Information on pulp and paper and utility sources currently utilizing CTRT indicates that several of these sources use between 5,000 and 70,000 tons of CTRT per year. Information compiled by M.A. Energy LLC. (MAER) contained in letters and emails from All4 Inc. to EPA dated January 29, and February 28, 2014.

⁷⁷ American Forest and Paper Association and American Wood Council's letter to George Faison, EPA. March 7, 2013.

⁷⁸ Petition for Determination Identifying Non-Hazardous Secondary Treated Wood Biomass as a Non-Waste under 40 CFR 241.4(a). Treated Wood Council April 2013.

Respondents also claim that units operated by end-use combustors that utilize CTRTs as an alternative fuel typically burn a variety of "traditional fuels," such as coal, biomass (i.e., hog fuel, bark fuel, and other biomass fuel materials), and fuel oil, as well as other materials and wastes, such as tire derived fuel, waste derived liquid fuel, and waste derived solid fuel.⁸¹ ⁸² In general, they claim that all of the units that burn CTRTs also burn significant quantities of biomass given the similarity of the fuels' characteristics. In addition, they claim that most of these units are permitted to burn fuel oil either during start-up or during normal operations. The respondents claim that many factors determine how much fuel oil is burned. For example, because natural gas prices are low, natural gas is often the fuel of choice, if available. In addition, they claim that some states are looking to reduce SO₂ emissions from sources and thus, encourage greater use of biomass or natural gas rather than fuel oil.⁸³

Respondents claim that the most comparable traditional fuel to railroad ties is fuel oil. However, they believe the question of whether a combustion unit is designed to burn a specific fuel is not relevant when EPA makes a determination under section 241.4(a). Specifically, the respondents claim that the EPA has interpreted the phrase "designed to burn" to mean that a combustor that burns NHSMs as a non-waste fuel has to be able to burn the NHSM in the combustion unit, which in the case of CTRTs, would require the installation of a nozzle for the delivery of liquid fuel into the boiler, to meet the contaminant legitimacy criterion EPA explained that this standard is to avoid the possibility that discard could be occurring in some situations.⁸⁴ However, in the context of a specific non-waste determination under section 241.4(a), the respondents argue that EPA has the opportunity to evaluate all the

⁸¹ To the extent that any of these boilers burn fuel derived from waste, or any other solid waste, they would be subject to the CAA Section 129 CISWI standards, and the Agency's proposal today would not impact their regulatory status.

⁸² American Forest and Paper Association and American Wood Council's letter to George Faison, EPA. March 7, 2013.

⁸³ Examples of combustors utilizing a variety of traditional and other fuels, including facilities combusting both CTRT and fuel oil, is found in documentation provided by the American Associations of Railroads (AAR). The document listed 11 non-pulp and paper facilities including power generators. All of the facilities listed combust CTRT, three facilities combust CTRT and fuel oil, three facilities combust CTRT and natural gas. Other fuels combusted include tire-derived fuel, and landfill gas. February 2013.

⁸⁴ See 78 FR 9149

⁷⁶ 76 FR 15483.

⁷⁷ American Forest & Paper Association, American Wood Council—Letter to EPA Administrator, December 6, 2012.

factors relating to the use of CTRTs as a fuel, including the fact that CTRTs is a commodity that is purchased by the combustor. Furthermore, respondents argue that EPA has the discretion to recognize that when a combustor purchases CTRTs and then burns it in a boiler, that combustion is for the purpose of generating energy rather than discarding the railroad ties. According to the respondents, any other conclusion would lead to the absurd result that one boiler can burn CTRTs as a legitimate fuel and another boiler—with essentially the same design except for a nozzle feed for fuel oil—would have to consider the CTRTs as a solid waste. (The Agency's response to this comment is discussed in Section V.C.4 Rationale for Proposed Listing.)

- *The extent to which non-industrial boilers (e.g. commercial or residential boilers) burn CTRTs for energy recovery:*

The respondent understands that the residential use of CTRTs for purposes of energy recovery is unlikely. However, they explained that several local utilities in the northern Midwest utilize CTRTs for purposes of power generation but they have not identified the specific facilities.

- *Laboratory analyses for contaminants known or reasonably suspected to be present in creosote-treated railroad ties, and contaminants known to be significant components of creosote, specifically polycyclic aromatic hydrocarbons (i.e., PAH-16), dibenzofuran, cresols, hexachlorobenzene, 2,4-dinitrotoluene, biphenyl, quinoline, and dioxins:*⁸⁵

Respondents submitted contaminant data for crushed CTRTs, which are discussed in Section V.C.4 (Rationale for Proposed Listing) below. With the exception of dioxins, which respondents explain will not be present in CTRTs, analyses were submitted for all requested constituents and many other contaminants.

3. Scope of Proposed Categorical Listing for CTRTs

As discussed above, AF&PA and the American Wood Council submitted a letter and supporting information to EPA on December 6, 2012, seeking a

⁸⁵ The Agency requested these analyses based on the limited information previously available concerning the chemical makeup of CTRTs. That limited information included one well-studied sample from 1990 (which indicated the presence of both PAHs and dibenzofuran), past TCLP results (which indicated the presence of cresols, hexachlorobenzene and 2,4-dinitrotoluene), Material Safety Data Sheets for coal tar creosote (which indicated the potential presence of biphenyl and quinoline), and the absence of dioxin analyses prior to combustion despite extensive dioxin analyses of post-combustion emissions.

categorical listing for CTRTs.⁸⁶ Information also has been provided by M.A. Energy Resources, LLC⁸⁷ and the Treated Wood Council regarding cross-tie derived fuel.⁸⁸ In addition, information on contaminant levels found in CTRTs has been provided by the Association of American Railroads.⁸⁹ Based on the additional data and information submitted to the Agency, contaminant levels found in CTRTs may not be materially different from fuel oil and biomass that these facilities are designed to burn as a fuel. Therefore, the Agency is proposing to list, categorically, processed CTRTs when used as a fuel in combustion units designed to burn both biomass and fuel oil.⁹⁰ The rationale for this proposal is discussed in detail in the sections below.

4. Rationale for Proposed Listing

a. Discard

When deciding whether an NHSM should be listed as a categorical non-waste fuel in accordance with section 241.4(b)(5), EPA first evaluates whether or not the NHSM has been discarded, and if not discarded, whether or not the material is legitimately used as a product fuel in a combustion unit. If the material has been discarded, EPA evaluates the NHSM as to whether it has been sufficiently processed into a material that is legitimately used as a product fuel.

As discussed above, crossties removed from service are sometimes temporarily stored in the railroad right-of-way or at another location selected by the reclamation company. This means that not all CTRTs originate from crossties removed from service in the same year; some CTRTs are processed from crossties removed from service in prior years and stored by railroads or removal/reclamation companies until a contract for reclamation is in place.

The December 6, 2012, letter from AF&PA states that in those cases where the railroad or reclamation company wait for more than a year to realize the value of the CTRTs as a fuel (or in landscaping), it does not mean or indicate that the CTRTs have been

discarded and cite 76 FR 15456, 15520 of the March 2011 rule. That section of the rule addresses the management of the NHSM as a valuable commodity and states that storage of the NHSM must be within a reasonable timeframe.⁹¹ The December 6 letter claims that a robust market for companies engaged in railroad tie reclamation, and the cost of this material indicates that the material is a valuable commodity and has not been discarded.

While the Agency recognizes that the reasonable timeframe for storage may vary by industry, the Agency does not believe that any explanation (other than a repeat of what the rules say) has been provided of why storage that may be longer than a year is not discarded, especially when they argue that CTRTs are a valuable material. Put another way, if the CTRTs have such value as a fuel or landscaping material, then why aren't they processed and used as a fuel or landscaping material in a relatively short period of time? Therefore, without further explanation or information from the public, the Agency concludes that CTRTs removed from service and stored in a railroad right of way or other location for long periods of time—that is, a year or longer, without a determination regarding their final end use (e.g. landscaping, as a fuel or land filled) indicates that the material has been discarded and is a solid waste (see the preamble discussion of discard 76 FR 15463 in the March 2011 rule). Regarding the assertion that the CTRTs are a valuable commodity in a robust market, the Agency would like to remind persons that NHSMs may have value in the marketplace and still be considered solid wastes.

Since the railroad ties removed from service are considered discarded because they can be stored for long periods of time without a final determination regarding their final end use, in order for them to be considered a non-waste fuel, they must be processed, thus transforming the railroad ties into a product fuel that meets the legitimacy criteria, or if not meeting the legitimacy criteria, would still be considered a non-waste fuel in balancing the legitimacy criteria with other relevant factors. The Agency concludes that the processing of CTRTs described above in section C.1. meets the definition of processing in 40 CFR 241.2. As discussed in Section V.A, processing includes operations that transform discarded NHSM into a non-

⁸⁶ AF&PA Ibid.

⁸⁷ M.A. Energy Resources, LLC 40 CFR Part 241, Subpart B—Crosstie Derived Fuel. February, 2013.

⁸⁸ Letter from Jeffrey Miller, Treated Wood Council to Lisa Feldt. December 17, 2012.

⁸⁹ Evaluation of Used Railroad Ties Treated with Creosote for Polynuclear Organic Material which includes Polynuclear Aromatic Hydrocarbons. January 2013. URS Corporation on behalf of American Association of Railroads.

⁹⁰ Fuel oils means fuel oils 1–6, including distillate, residual, kerosene, diesel, and other petroleum based oils. It does not include gasoline or unrefined crude oil.

⁹¹ As discussed in the NHSM final rule (76 FR 15520), “reasonable time frame” is not specifically defined as such time frames vary among the large number of non-hazardous secondary materials and industries involved.

waste fuel or non-waste ingredient, including operations necessary to: remove or destroy contaminants; significantly improve the fuel characteristics (e.g., sizing or drying of the material, in combination with other operations); chemically improve the as-fired energy content; or improve the ingredient characteristics. Minimal operations that result only in modifying the size of the material by shredding do not constitute processing for the purposes of the definition. Specifically, the Agency concludes that CTRTs meet the definition of processing in 40 CFR 241.3 because:

- Contaminants (spikes, nails, plates, etc.) are removed using a magnet. This magnetic removal of metals may occur several times during processing.
- The fuel characteristics of the material are improved when the crossties are ground or shredded to a specified size depending on the particular needs of the end-use combustor. The grinding may occur in one or more phases. Once the CTRTs are ground, there may be additional screening to bring the material to a specified size.

b. Legitimacy Criteria

As discussed above, EPA can list a discarded NHSM categorically as a non-waste fuel if it has been “sufficiently processed,” and meets the legitimacy criteria. If the Agency were to list such NHSM categorically as a non-waste fuel, those who use the material would not have to evaluate and document the regulatory status of the material on a case-by-case basis. The three legitimacy criteria to be evaluated are: (1) The NHSM must be managed as a valuable commodity, (2) the NHSM must have a meaningful heating value and be used as a fuel in a combustion unit to recover energy, and (3) the NHSM must have contaminants or groups of contaminants at levels comparable to or less than

those in the traditional fuel the unit is designed to burn.⁹²

i. Managed as a Valuable Commodity

The processing of CTRTs is correlated to the particular needs of the end-use combustor. Additional screening may take place after the grinding and shredding of the CTRTs if deemed necessary. Once the CTRTs meet the end use specification, they are then sold directly to the end-use combustor for energy recovery. CTRTs are delivered to the end-use combustors via railcar and/or truck similar to how traditional biomass fuels are delivered. While awaiting combustion at the end-user, which usually takes place within a week of arrival, the CTRTs are transferred and/or handled from storage in a manner consistent with the transfer and handling of biomass fuels. Such procedures typically include screening by the end-use combustor, combining with biomass fuels, and transferring to the combustor via conveyor belt or front-end loader. Since processed CTRTs storage does not exceed reasonable time frames and are handled/treated similar to analogous biomass fuels by end-use combustors, CTRTs meets the criterion for being managed as a valuable commodity.⁹³

ii. Meaningful Heating Value and Used as Fuel To Recover Energy

EPA received recent information that the heating value of processed CTRTs ranges from 6,000–8,000 Btu/lb as fired, and that combustion units recover energy by burning the material as fuel. Information compiled by EPA in 2011 indicates that CTRTs could replace clean wood that has an average as-fired heating value of 5,150 Btu/lb, with a low as-fired heating value of 3,440 Btu/lb.⁹⁴ In the March 2011 NHSM final rule, the Agency indicated that NHSMs with an energy value greater than 5,000 Btu/lb, as fired, are considered to have

a meaningful heating value.⁹⁵ Thus, CTRTs have greater heating value than much of the traditional fuel it replaces and, therefore, meets the criterion for meaningful heating value and used as a fuel to recover energy.

iii. Contaminants Comparable to or Lower than Traditional Fuels

Data on contaminant comparisons. For CTRTs, EPA has compared the additional data submitted on contaminant levels by petitioners to analogous data for two traditional fuels: biomass (including untreated clean wood) and fuel oil. As noted above, the data EPA received on CTRTs comes from the following three sources: M.A. Energy Resources (MAER), URS Corporation on behalf of the Association of American Railroads, and AF&PA. The information submitted by MAER included a comprehensive analysis of one CTRT sample. The sample came from a CTRT pile located at an end-use combustor. The URS Corporation report included three samples of processed CTRT from the National Salvage facility in Selma, Alabama, and from a Stella Jones facility in Duluth, Minnesota. AF&PA submitted documents comparing contaminant concentrations in CTRTs with traditional fuels. AF&PA compiled data from various sources in these documents. EPA considers data from these eight facilities to be representative of the CTRT universe because the composition of the creosote component of the CTRTs is the same—that is, the P2 blend of creosote, as well as the fact that multiple samples have been taken in different parts of the country at different points in the CTRT management chain. Table 3 lists the aggregated CTRT data received as it compares to contaminants found in two traditional fuels that petitioners claim are used, in varying amounts, at facilities burning processed CTRTs for energy recovery.

TABLE 3—CONTAMINANT RANGES IN TRADITIONAL FUELS AND CTRT
[In parts per million]

Contaminant	Biomass ^a	Fuel Oil ^a	CTRTr ^b
Metal Elements:			
Antimony (Sb)	ND–26	ND–15.7	ND
Arsenic (As)	ND–298	ND–13	ND–3.2 ND
Beryllium (Be)	ND–10	ND–19	ND–0.3
Cadmium (Cd)	ND–17	ND–1.4	ND–0.3

⁹² We note that even if the NHSM does not meet one or more of the legitimacy criteria, the Agency could still propose to list an NHSM categorically by balancing the legitimacy criteria with other relevant factors.

⁹³ Prior to the CTRTs being processed as a product fuel, the CTRTs are considered solid wastes

and would be subject to appropriate federal, state, and local requirements.

⁹⁴ Fuel analysis data for unadulterated time. USEPA, Office of Air Quality Planning and Standards, Emissions Data for Boilers and Process Heaters Containing Stack Test, CEM & Fuel Analysis Data Reported Under ICR No.2286.03

(Version 6) EPA Docket Number EPA–HQ–OAR–2002–0058–3255. February 2011.

⁹⁵ See 76 FR 15541.

TABLE 3—CONTAMINANT RANGES IN TRADITIONAL FUELS AND CTRT—Continued
[In parts per million]

Contaminant	Biomass ^a	Fuel Oil ^a	CTRT ^b
Chromium (Cr)	ND–340	ND–37	ND–15.3
Cobalt (Co)	ND–213	ND–8.5	ND
Lead (Pb)	ND–340	ND–56.8	ND–9.6
Manganese (Mn)	ND–15,800	ND–3,200	63–185
Mercury (Hg)	ND–1.1	ND–0.2	0.02–0.05
Nickel (Ni)	ND–540	ND–270	ND–38
Selenium (Se)	ND–9	ND–4	ND–1
Non-Metal			
Chlorine (Cl)	ND–5,400	ND–1,260	22–400
Fluorine (F)	ND–300	ND–14	100
Nitrogen (N)	200–39,500	42–8,950	1,600–14,400
Sulfur (S)	ND–8,700	ND–57,000	681–3,277
Volatile Organic			
Benzene		ND–75	ND
Phenol		ND–7,700	ND
Styrene		ND–320	ND
Toluene		ND–380	ND
Xylenes		ND–3,100	0.325
Cumene		6,000–8,600	ND
Ethyl benzene		22–1270	0.058
Formaldehyde	1.6–27		ND
Hexane		50–10,000	ND
15 Additional VOC			ND
Total VOC ^c	1.6–27	6,072–19,810	0.383
Semivolatile:			
Biphenyl		1,000–1,200	137–330
16-PAH ^d		3,900–54,700	6641–21,053
Dibenzofuran			570–1,500
Quinoline			40.2
Cresols			1.51
Hexachlorobenzene		ND	ND
2,4-dinitrotoluene		ND	ND
Lindane			0.238
11 Additional			ND
Total SVOC ^c		4,900–54,700	7,618–22,883

^a“Contaminant Concentrations in Traditional Fuels: Tables for Comparison” document available at http://www.epa.gov/epawaste/nonhaz/define/pdfs/nhsm_cont_tf.pdf. Contaminant data drawn from various literature sources and from data submitted to USEPA, Office of Air Quality Planning and Standards (OAQPS).

^b(1) MA Energy Resources, LLC. February 2013 Crosstie Derived Fuel Petition; (2) URS, Evaluation of Used Railroad Ties Treated with Creosote. Prepared for Association of American Railroads. January 28, 2013; (3) AF&PA, Comparison of Contaminant Concentrations in Crosstie Derived Fuel with Traditional Fuels. February 28, 2013.

^cTotal VOC and SVOC ranges do not represent a simple sum of the minimum and maximum values for each contaminant. This is because minimum and maximum concentrations for individual VOCs and SVOCs do not always come from the same sample.

^d16-PAH includes: acenaphthene, acenaphthylene, anthracene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(g,h,i)perylene, benzo(k)fluoranthene, chrysene, dibenz(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene, naphthalene, phenanthrene, and pyrene.

As shown in Table 3, all contaminant concentration levels for metals are within the ranges identified for fuel oil and biomass. We note that when comparing the non-metal elemental contaminants, however, fluorine and nitrogen levels in CTRTs are not comparable to fuel oil, and semi-volatile organic compound (SVOC) levels are not comparable to biomass. Given that CTRTs are a type of treated wood biomass, and any unit burning CTRTs typically burns untreated wood, EPA considered three scenarios that petitioners described.⁹⁶

⁹⁶ We note that contaminant data received also compared coal to CTRTs as the traditional fuel for comparison. Like biomass, CTRT contaminant

In the first scenario, where a combustion unit is designed to only burn biomass, EPA compared contaminant levels in CTRT to contaminant levels in biomass. In this scenario, the total SVOC levels can reach 22,883 ppm, driven by high levels of polycyclic aromatic hydrocarbons (PAHs) and, to a lesser extent, the levels

concentration levels for SVOCs exceeded those in coal, but were comparable to levels in fuel oil. Likewise, contaminant levels for nitrogen and fluorine in CTRTs were comparable to those in coal, but exceeded those in fuel oil. Thus, units designed to burn both biomass and fuel oil may, in addition, burn coal if the unit is also designed to burn that material.

of dibenzofuran and biphenyl.⁹⁷ These compounds are largely nonexistent in clean wood and biomass, and the contaminants are therefore not comparable in this instance. In fact, they are present at orders of magnitude higher than found in clean wood and biomass.

In the second scenario, where a combustion unit is designed to burn various solid fuels, EPA compared

⁹⁷ We note that for several SVOCs—cresols, hexachlorobenzene, and 2,4-dinitrotoluene, which were expected to be in creosote, and for which information was specifically requested in the February 7, 2013 NHSM final rule (78 FR 9111), the data indicate that they were not detectable, or were present at levels so low to be considered comparable.

contaminant levels in CTRTs to both coal and biomass (see footnote 23). Again, however, total SVOCs would not be comparable, and in fact, would be present at orders of magnitude higher than found in biomass i.e. up to 22,883 ppm in CTRTs.

In the third scenario, a combustion unit is designed to burn biomass and fuel oil. As previously mentioned, fluorine, and nitrogen levels in CTRTs are present at elevated levels when compared to fuel oil. However, the highest levels of fluorine (100 ppm) and nitrogen (14,400 ppm) are comparable to, or well within the levels of these contaminants in biomass. Likewise, SVOCs are present in CTRTs (up to 22,883 ppm) at levels well within the range observed in fuel oil (up to 54,700 ppm). Accordingly, contaminant concentration levels for fluorine, nitrogen, and SVOCs are within the ranges identified for either biomass or fuel oil. Therefore, CTRTs have comparable contaminant levels to other fuels combusted in units designed to burn both biomass and fuel oil, and as such, meet this criterion.

As stated in the preamble to the February 7, 2013, NHSM final rule, EPA believes that combustors may burn NHSMs as a product fuel if they compare appropriately to any traditional fuel the unit can or does burn. (78 FR 9149) Combustion units are often designed to burn multiple traditional fuels, and some units can and do rely on different fuel types at different times based on availability of fuel supplies, market conditions, power demands, and other factors. Under these circumstances, it would be arbitrary to restrict the combustion for energy recovery of NHSMs based on contaminant comparison to only one traditional fuel if the unit could burn a second traditional fuel chosen due to such changes in fuel supplies, market conditions, power demands or other factors. If a unit can burn both a solid and liquid fuel, then comparison to either fuel would be appropriate.

In order to make comparisons to multiple fuels, as was also discussed in the preamble to the February 7 rule, units must be designed to burn those fuels (78 FR 9111, page 9150). If a facility compares contaminants in an NHSM to a traditional fuel a unit is not designed to burn, and that material is highly contaminated, a facility would then be able to burn excessive levels of waste components in the NHSM as a means of discard. Such NHSMs would be considered wastes regardless of any fuel value. Accordingly, the ability to burn a fuel in a combustion unit does have a basic set of requirements, the

most basic of which is the ability to feed the material into the combustion unit. The unit should also be able to ensure the material is well-mixed and maintain temperatures within unit specifications.

Available information regarding use of fuel oil. As discussed in section 2.b., petitioners indicated during the comment period that there are combustion units designed to burn biomass and fuel oil, but did not identify specific units. In a March 2013 letter,⁹⁸ petitioners stated that the overwhelming majority of creosote-treated railroad ties burned at paper mills are burned in boilers that are fully capable and permitted to burn at maximum capacity rating. AFPA claims that most of these boilers (80%) can or do burn oil during operating conditions outside of startup and shutdown periods.⁹⁹

Additional information was submitted by petitioners subsequent to this claim, however.¹⁰⁰ The new information indicates that while stoker, bubbling bed or fluidized bed boilers at major source¹⁰¹ paper mills are currently designed to combust both fuel oil and CTRTs, few, if any, of these units may be combusting both fuel oil and biomass in the future since those units will be switching from fuel oil to natural gas for start-up periods and operations. The petitioners indicated that continued use of fuel oil during operation would result in higher compliance costs and higher costs per Btu. Petitioners stated that the switch to natural gas for operation requires replacement of start-up fuel systems, and that the most efficient and least emitting start-up systems use specialized burners for gas.

We note that EPA collected information from owners and operators of combustion units across a wide variety of industries in its development of emissions standards for boilers and process heaters under section 112 of the Clean Air Act. In that context, based on

⁹⁸ American Forest and Paper Association and American Wood Council's letter to George Faison, EPA, March 7, 2013.

⁹⁹ American Forest and Paper Association and American Wood Council's letter to George Faison, EPA, March 7, 2013.

¹⁰⁰ E.O. 12866 meeting between Office of Management and Budget and American Forest and Paper Association—September 20, 2013. Meeting between American Forest and Paper Association and Mathy Stanislaus, December 19, 2013. Handouts from the meeting can be found in the docket for today's rule.

¹⁰¹ Section 112(a)(1) of the CAA defines the term "major source" to mean any stationary source or group of stationary sources located within a contiguous area that emit or have the potential to emit in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

the information submitted by industry (including petitioners and others), EPA concluded that units that combust solid fuels generally used fuel oil or natural gas only as a startup fuel. EPA concluded that changing the fuel type in such units would generally require extensive changes to the fuel handling and feeding system, as well as modification to the burners and combustion chambers. 75 FR 32006, 32017. For these reasons, EPA treated these units as units designed to combust solid fuels (including biomass). Further, the information submitted for the ICR indicated that some biomass units may combust fuel oil at other times, for example, for transient flame stability purposes if they are combusting biomass with a high moisture content. However, the ICR did not indicate the amount of fuel oil being combusted, or whether fuel oil was combusted alone or in conjunction with solid fuel, such as biomass. Therefore, at the time of the development of the boiler MACT, EPA did not have any information, including information submitted in response to the ICR, indicating there are units designed to burn solid fuel which commonly switch between combusting biomass and fuel oil or otherwise combusted fuel oil as part of normal operation.

Information related to dibenzofurans and dioxins. As discussed above, the Agency requested data on dibenzofuran and dioxins, in large part because dibenzofuran is known to be present in CTRTs and listed as a HAP under CAA section 112 and dioxins are a pollutant under CAA sections 112 and 129.

Petitioners submitted an explanatory document in response to the Agency's request.¹⁰² The document provided additional information regarding (a) the presence of dibenzofuran in creosote and creosote-treated wood, and (b) whether the presence of dibenzofuran can indicate the concurrent presence of the polychlorinated versions of these compounds, viz., polychlorinated dibenzo p-dioxins and dibenzofurans (PCDD/F—often collectively termed dioxins).

The petitioners' data confirms the presence of dibenzofurans. Petitioners acknowledged that coal tar creosote used in preparing railroad ties may have levels of dibenzofuran up to 4.5% or 45,000 ppm, and dibenzofuran concentrations measured in seven samples of railroad ties previously treated with creosote ranged from 570 to 1,500 ppm. However, as indicated by

¹⁰² American Forest and Paper Association and American Wood Council—Letter to George Faison, EPA March 7, 2013.

the petitioners, this compound should not be confused with dioxins or furans, which refers to a larger group of polychlorinated dibenzofurans and dibenzodioxins.

The Agency agrees with the petitioners explanation that dibenzofuran present in the CTRTs should not result in the formation of dioxins, but as a HAP itself, dibenzofuran is still appropriate to include in the list of SVOCs for comparison to traditional fuels.¹⁰³ Regarding dioxins, the document indicted that dioxins should not be present in the material. The Agency agrees that the level of chlorine during creosote production is not sufficient to form dioxins in coal tar creosote and therefore dioxin should not be present in CTRTs prior to combustion.

As discussed previously, the March 2011 NHSM final rule noting the presence of hexachlorobenzene and dinitrotoluene, suggested that creosote-treated lumber include contaminants at levels that are not comparable to those found in wood or coal, the fuel that creosote-treated wood would replace, and would thus be considered solid wastes. Today's proposed rule differs in several respects from the conclusions in the March 2011 rule. Today's proposal concludes that CTRTs are a categorical non-waste when combusted in units designed to burn both fuel oil and biomass. The March 2011 rule, using 1990 data on railroad cross ties, was based on contaminant comparisons to coal and biomass and not fuel oil. As discussed above, when compared to fuel oil, total SVOC contaminant concentrations (which would include dinitrotoluene and hexachlorobenzene) in CTRTs would be less than those found in fuel oil, and in fact, the 2012 data referenced in today's proposal showed non-detects for those two contaminants.

c. Other Relevant Factors in a Categorical Non-Waste Determination for CTRT

In their request for a categorical listing of CTRTs and in background information submitted subsequent to that request, petitioners argue that, in the context of a specific non-waste

¹⁰³ When making contaminant comparisons for purposes of meeting the legitimacy criterion, the Agency allows grouping of contaminants. For example, under the grouping concept, individual SVOC levels may be elevated above that of the traditional fuel, but the contaminant legitimacy criterion will be met as long as total SVOCs is comparable to or less than that of the traditional fuel. Such an approach is standard practice employed by the Agency in developing regulations and is consistent with monitoring standards under CAA sections 112 and 129. See 78 FR 9146 for further information.

determination under § 241.4(a), the Agency can balance the legitimacy criteria against other relevant factors in any decision to list an NHSM categorically. See 40 CFR 241.4(b)(5). Specifically, the petitioners argue that the phrase "designed to burn" can be another relevant factor that the Agency can consider in making a decision on listing CTRTs categorically as a non-waste fuel. They argue that by conducting such balancing, the Agency could allow CTRTs to be burned as a non-waste fuel in any combustion unit that can combust biomass, whether or not the combustion unit is designed to burn fuel oil. Thus, the petitioners request that the Agency re-define or ignore the "design to burn" concept, as currently interpreted for the purposes of this categorical listing.

In arguing that the Agency can re-define or ignore the "design to burn" concept, petitioners identified additional relevant factors to be considered in a categorical listing for CTRTs. Specifically:

- CTRTs are functionally the same as other comparable traditional fuels, such as fossil fuels used in a fuel mix to maintain an appropriate BTU level for the biomass boilers., combusted in the same units and subject to the same air pollution controls.^{104 105}
- CTRTs are integral to the production process similar to any other fuel used and consistently have lower moisture content and higher Btu value than other biomass fuel.
- CTRTs are commodity fuels—users pay \$20—\$30 per ton thus the petitioners believe that the material is not being discarded.
- High levels of PAHs in CTRTs and removal of oil delivery mechanisms from units designed to combust fuel oil and CTRTs is not an indication that the material is being "discarded" and is thus a solid waste.¹⁰⁶ As discussed

¹⁰⁴ Petitioner arguments regarding functional equivalence and use of CTRT as a commodity are also outlined in Legal Analysis Supporting Listing Railroad Tie Fuel as a Nonwaste under § 241.4(a)(January 15, 2014.) American Forest and Paper Association.

¹⁰⁵ To further support a finding of functional equivalency, petitioners submitted data claiming that stack emissions of PAHs (PAHs are higher in railroad ties than in coal or biomass), are controlled in the same way as all organic constituents present in the other fuels used by the boilers that combust railroad tie fuel. The Air Emissions Impact of Burning Railroad Tie-Derived Fuel. NCASI, January 2014.

¹⁰⁶ Petitioners also argued in their December 19, 2013 background material that high PAH levels in fuels are not related to PAH emission levels. They indicated that Boiler MACT carbon monoxide (CO) limits ensure good combustion practices by minimizing PAHs and other products of incomplete combustion (under the Boiler MACT standards, CO is a surrogate for organic HAPs such as PAHs.) Dry

previously, units will be switching from fuel oil to natural gas. Such units designed to combust both fuel oil and CTRTs include stoker, bubbling bed and fluidized bed boilers. Boilers that have burned fuel oil currently or in the past will discontinue using fuel oil, however, petitioners argue that they have clearly demonstrated the ability to burn that material as a product fuel.

In general, the petitioners argue that any combustor that purchases CTRTs for use as a fuel is purchasing the material because of its fuel value and that any burning is clearly for generating energy, as opposed to discarding CTRTs. Otherwise, they argue it would lead to the absurd result that for a boiler that can burn fuel oil and CTRTs, the CTRTs would be considered a non-waste fuel, whereas another boiler that cannot burn fuel oil, but also burns CTRTs, the CTRTs would be considered a solid waste. Some recyclers and combustors, according to petitioners, have been managing CTRTs as non-waste fuel, irrespective of the type of boiler or combustion unit.

While we agree with the petitioners that the agency can list an NHSM categorically by balancing the legitimacy criteria against other relevant factors (40 CFR 241.4(b)(5)(ii)), we do not agree that the Agency can simply ignore any of the legitimacy criteria, or other relevant factors, including the contaminant legitimacy criterion. In particular, the petitioners argue that any biomass material regardless of the contaminant or how contaminated it is, should be considered a non-waste fuel.

Purchase of the material as a commodity for its fuel value is a factor, but not determinative when considering whether discard has occurred. Further, elevated levels of contaminants remaining in the material can indicate that the material is being discarded. While the Agency recognizes that other relevant factors may be considered when one of the legitimacy criteria are not met, there is a limit to the levels of contamination allowed in balancing other relevant factors with the legitimacy criteria.

We do not agree with petitioner's claim that CTRT are functionally the same as other comparable traditional fuels, such as fossil fuels that are used in a fuel mix to maintain an appropriate BTU level for the biomass boilers, that are combusted in the same units and subject to the same air pollution controls. CTRT contains contaminants at levels that are not comparable to the

fuels such as CTRT increase heat value of the fuel mix improving combustion temperature and conditions.

contaminant levels in biomass, the traditional fuel the units combusting CTRT are designed to burn. As discussed, there is a limit to the levels of such contamination allowed in balancing other relevant factors and elevated levels of contaminants remaining in the material can indicate that the material is being discarded. Further, all CTRTs are not functionally the same as comparable traditional fuels since it must be processed by reclamation companies to remove metals (spikes, nails etc) and shredded into chips to make it suitable as a fuel source.

We also do not agree that CTRTs are integral to the production process. In a previous categorical determination for resinated wood, the Agency did conclude that the material was integrated into the production process and was thus a categorical non-waste (78 FR 9155). The Agency based that conclusion on information indicating that resinated wood production facilities were specifically designed to utilize that material for their fuel value, and the plants could not operate as designed without the use of resinated wood. Similar information was not received for CTRTs.

Nevertheless, we agree with petitioners that the removal of oil delivery mechanisms from units designed to combust fuel oil and CTRT is not necessarily an indication that the material is being "discarded." As discussed above, units designed to combust both fuel oil and CTRT, including stoker, bubbling bed and fluidized bed boilers, are switching from fuel oil in order to combust natural gas. Boilers that have burned fuel oil currently or in the past will discontinue using fuel oil but have demonstrated the ability to burn that material.

5. Summary and Request for Comment

EPA believes it has sufficient information to list CTRTs categorically as a non-waste fuel in combustion units that are designed to burn both biomass and fuel oil. We would like to make clear that the Agency would consider units to meet this requirement if the unit combusts fuel oil as part of normal operations and not solely as part of start up or shut down operations.

At the same time, the Agency is considering an approach (based on the information described above) that would include as a categorical non-waste, CTRTs that are: (1) Combusted as part of normal operations in existing units that are designed to burn both CTRTs and fuel oil; and, (2) combusted in units at major source pulp and paper mills that are being modified in order to

use clean fuel, such as natural gas instead of fuel oil. The Agency does not believe that combustion of CTRTs in boiler units that are currently designed to burn both biomass and fuel oil but are changing (i.e. removing oil delivery equipment) in order to burn natural gas should be considered discard. Information indicating that CTRTs are an important part of the fuel mix due to the consistently lower moisture content and higher Btu value, as well as the benefits of drier more consistent fuel to combustion units with significant swings in steam demand, further suggest that discard is not occurring.¹⁰⁷

If EPA were to include this additional approach in the categorical listing, the CTRT could continue to be combusted only if certain conditions are met, which are all intended to ensure that the CTRTs are not being discarded. Such conditions include:

- The CTRTs must be burned in an existing stoker, bubbling bed or fluidized bed boiler;—
- The CTRTs can comprise no more than 40% percent of the fuel that is used on a monthly basis;¹⁰⁸
- The boiler that burned the CTRTs must have been designed to burn both fuel oil and biomass; and
- The boiler is modifying its design to also burn natural gas.

The Agency emphasizes that the approach described above is meant to address only the current circumstance where contaminants in CTRTs are comparable to or less than the traditional fuels the unit was designed to burn (both fuel oil and biomass) but that design is modified in order to combust natural gas. The approach is not a general means to circumvent the contaminant legitimacy criterion by allowing combustion of any NHSM with elevated contaminant levels, i.e. levels not comparable to the traditional fuel the unit is currently designed to burn.

The particular facilities in this case have used CTRTs and would clearly be in compliance with the legitimacy criteria if they do not switch to the cleaner natural gas fuel. EPA believes it is appropriate to balance other relevant factors in this categorical non-waste determination and that it is appropriate for the Agency to decide that the switching to the cleaner natural gas¹⁰⁹

¹⁰⁷ The approach under consideration, if adopted, is in addition to the proposed categorical listing of CTRTs combusted in units designed to burn biomass and fuel oil. It is not an alternative approach or replacement for that proposed listing.

¹⁰⁸ Statements at meeting between American Forest and Paper Association and Mathy Stanislaus on December 19, 2013 indicate that, CTRT generally comprises 40% of total fuel load.

¹⁰⁹ The Agency recognizes natural gas as a source of clean energy. The burning of natural gas

would not render the CTRTs a waste fuel in view of the historical usage which would be a product fuel in the stoker, bubbling bed and fluidized bed boilers. The nature of the CTRTs as a product fuel does not make it a waste on switching to the cleaner natural gas for the boiler.

The Agency invites comments on the proposed non-waste categorical determination and the additional approach under consideration described above. Comments should only be submitted regarding CTRTs. The Agency is not accepting comments on other wood treated with creosote. The Agency also requests comments specifically on the use of multiple fuels for contaminant comparison in evaluating whether to categorically list CTRTs, including whether fuel oil itself should be one of the traditional fuels used for comparison given the factual circumstances described above. In addition, the Agency requests any additional data that should be considered in making the comparability determination.

Regarding the additional approach under consideration, the Agency requests comment whether the approach should be applied to sources at other industries in addition to pulp and paper mills, such as utilities and co-generation plants. Regarding the condition that CTRTs can comprise no more than 40% of the fuel that is used on a monthly basis, the Agency requests comment on the appropriateness of the 40% limit as a percentage of fuel used, the monthly or yearly basis for the limit, and, if the additional approach is applied to other industries, such as utilities, what percentage (if any) would be appropriate for that industry(s). Finally, the Agency requests comment on whether combustors should be required to keep records that the conditions for burning of CTRT described above have been met.

VI. Technical Corrections

A. Change to 40 CFR 241.3(b)(2)

As NHSMs that are not solid wastes when combusted under 40 CFR 241.3(b), § 241.3(b)(2) includes reserved sections (i) and (ii). Sections (i) and (ii) were reserved in response to the new 40 CFR 241.4(a)(1) categorical non-waste

produces nitrogen oxides and carbon dioxide, but in lower quantities than burning coal or oil. Methane, a primary component of natural gas and a greenhouse gas, can also be emitted into the air when natural gas is not burned completely. Similarly, methane can be emitted as the result of leaks and losses during transportation. Emissions of sulfur dioxide and mercury compounds from burning natural gas are negligible. (see <http://www.epa.gov/cleanenergy/energy-and-you/affect/natural-gas.html>)

standards in the February 7, 2013 rulemaking. Those standards had eliminated the need for previous standards under sections (i) and (ii) related to scrap tires managed under established tire collection programs and resinated wood (see section IV.A. History of NHSM Rulemakings). However, reserving only (i) and (ii), and not the introductory sentence, led to some confusion with the categorical non-waste standards. For clarity, and to ensure consistent numbering with the following sections, we are proposing to amend 40 CFR 241.3(b)(2) by reserving paragraph (b)(2) in its entirety.

B. Change to 40 CFR 241.3(c)(1)

The description of the petition process identified in 40 CFR 241.3(c)(1) contains a typographical error. Specifically, the last sentence of the 40 CFR 241.3(c)(1) regulatory text from the February 2013 final rule states the determination will be based on whether the non-hazardous secondary material that has been discarded is a legitimate fuel as specified in paragraph (d)(1) of the section and on the following criteria.

However, the intent of this sentence is to say that the determination is based on “whether it has or has not been discarded” in addition to other factors. Therefore, we are proposing to amend the regulatory text in this proposed rule to add a “not” before “been discarded” and remove “that” after “non-hazardous secondary material.”

C. Change to 40 CFR 241.3(d)(1)(iii)

The Agency is also making a technical correction to 40 CFR 241.3(d)(1)(iii) to clarify that the provision applies to combustion units (not just boilers). Specifically, that section of the rule identifies the legitimacy criteria for non-hazardous secondary materials relating to contaminant comparisons between the traditional fuel(s) a unit is designed to burn and the NHSM. It states that a person may choose a traditional fuel that can be burned in any type of *boiler* (emphasis added), whereas the rest of the sentence refers to the combustion unit. Like a boiler, a cement kiln that combusts any non-hazardous solid waste is subject to regulation as a Commercial or Industrial Solid Waste Incineration (CISWI) unit pursuant to section 129(g)(1) of the CAA. In order for a cement kiln not to be classified as a CISWI unit, it must use a fuel that is/has been determined to be a non-waste fuel under 40 CFR part 241 when combusted. Consistent with the section as a whole, the word “boiler” is replaced with “combustion unit” to clarify that a person may choose a traditional fuel that can be or is burned

in a combustion unit, which can be a cement kiln, as well as a boiler.

VII. Effect of Today’s Proposal on Other Programs

Beyond proposing to expand the list of NHSMs that categorically qualify as non-waste fuels, this proposal does not change the effect of the NHSM regulations on other programs as described in the March 2011 NHSM final rule, as amended in February 2013. Refer to Section VIII of the March 2011 NHSM final rule¹¹⁰ for the discussion on the effect of the NHSM rule on other programs.

VIII. State Authority

A. Relationship to State Programs

This proposal does not change the relationship to state programs as described in the March 2011 NHSM final rule. Refer to Section IX of the March 2011 NHSM final rule¹¹¹ for the discussion on state authority including, “Applicability of State Solid Waste Definitions and Beneficial Use Determinations” and “Clarifications on the Relationship to State Programs.” The Agency, however, would like to reiterate that this proposed rule (like the March 2011 and the February 2013 final rules) is not intended to interfere with a state’s program authority over the general management of solid waste.

B. State Adoption of the Rulemaking

No federal approval procedures for state adoption of today’s proposed rule are included in this rulemaking action under RCRA subtitle D. Although the EPA does promulgate criteria for solid waste landfills and approves state municipal solid waste landfill permitting programs, RCRA does not provide the EPA with authority to approve state programs beyond those landfill permitting programs. While states are not required to adopt regulations promulgated under RCRA subtitle D, some states incorporate federal regulations by reference or have specific state statutory requirements that their state program can be no more stringent than the federal regulations. In those cases, the EPA anticipates that, if required by state law, the changes being proposed today, if finalized, will be incorporated (or possibly adopted by authorized state air programs) consistent with the state’s laws and administrative procedures.

IX. Cost and Benefits

The value of any regulatory action is traditionally measured by the net

change in social welfare that it generates. This rulemaking, as proposed, establishes a categorical non-waste listing for selected NHSMs under RCRA. This categorical non-waste determination allows these materials to be combusted as a product fuel in units, subject to the section 112 CAA emission standards, without being subject to a detailed case-by-case analysis of the material(s) by individual combustion facilities. The proposal establishes no direct standards or requirements relative to how these materials are managed or combusted. As a result, this action alone does not directly invoke any costs¹¹² or benefits. Rather, this RCRA proposal is being developed to simplify the rules for identifying which NHSMs are not solid wastes and to provide additional clarity and direction for owners or operators of combustion facilities. In this regard, this proposal provides a procedural benefit to the regulated community, as well as the states through the establishment of regulatory clarity and enhanced materials management certainty.

Because this RCRA action is definitional only, any costs or benefits indirectly associated with this action would not occur without the corresponding implementation of the relevant CAA rules. However, in an effort to ensure rulemaking transparency, we have prepared an assessment in support of this action that examines the potential scope and direction of these indirect impacts, for both costs and benefits.¹¹³ This document is available in the docket for review and comment. Finally, we recognize that this action would indirectly affect various materials management programs and policies, and we are sensitive to these concerns. The Agency encourages comment on these effects.

The assessment document, as mentioned above, finds that facilities operating under CAA section 129 standards that are currently burning CTRTs, and no other solid wastes, and who had planned to continue burning these materials, may experience cost savings associated with the potential modification and operational adjustments of their affected units. In this case, the unit-level cost savings are estimated, on average, to be

¹¹²Excluding minor administrative burden/cost (e.g. rule familiarization).

¹¹³U.S. EPA, Office of Resource Conservation and Recovery, “Assessment of the Potential Costs, Benefits, and Other Impacts for the Proposed Rule: Categorical Non-Waste Determination for Selected Non Hazardous Secondary Materials (NHSMs): Construction and Demolition Wood, Recycling Process Residuals, and Creosote-Treated Railroad Ties” July 22, 2013.

¹¹⁰ 76 FR 15456, March 21, 2011 (page 15545).

¹¹¹ 76 FR 15456, March 21, 2011 (page 15546).

approximately \$266,000 per year. In addition, the increased regulatory clarity and certainty associated with this action may stimulate increased product fuel use for one or more of these NHSMs, potentially resulting in upstream life cycle benefits associated with reduced extraction of selected virgin materials.

X. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2493.01.

This action will impose a direct RCRA related burden associated with reading and understanding the rule. This burden is estimated at approximately \$74 per entity and would impact facilities that generate the proposed NHSMs, and those that combust these materials as a fuel product. In addition, combustors of C&D wood must request a written certification from C&D processing facilities that the C&D wood that they intend to burn as a non-waste fuel has been processed by trained operators in accordance with best management practices, as defined in the rule. We estimate the preparation of this certification would take about 4.1 hours for processors to prepare, at a total cost of approximately \$299 per statement.¹¹⁴ In addition, the burner would need to receive, review and maintain the certification statement. The indirect cost

for this activity is estimated at \$23.40 per submission. Burden is defined at 5 CFR 1320.3(b).

The preparation of the certification statement and the need to maintain certification status is the responsibility of the processor. The combustor also would be required to maintain the certification statement on file; however, there is already an existing requirement for combustors to maintain records that show how they are in compliance with the 40 CFR 241.3 and 241.4 requirements. Thus, the requirement to maintain the certification statement provided by the processor would simply be in place of records that would need to be maintained for processed C&D wood, absent a categorical non-waste fuel determination. OMB has previously approved the information collection requirements contained in the existing NHSM regulation at 40 CFR part 241 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0205.

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

To comment on the Agency’s need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–RCRA–2013–0110. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 14, 2014, a comment to OMB is best assured of having its full effect if OMB receives it by May 14, 2014. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies

that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today’s proposed rule on small entities, small entity is defined as: (1) A small business as defined by the SBA’s regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

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

The proposed addition of the three NHSMs to the list of categorical non-waste fuels is expected to indirectly reduce materials management costs. In addition, this action will reduce regulatory uncertainty associated with these materials and help increase management efficiency. We have therefore concluded that today’s proposed rule will relieve regulatory burden for all affected small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This 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. UMRA generally excludes from the definition of “Federal intergovernmental mandate” duties that

¹¹⁴ U.S. EPA, Office of Resource Conservation and Recovery, “Assessment of the Potential Costs, Benefits, and Other Impacts for the Proposed Rule: Categorical Non-Waste Determination for Selected Non-Hazardous Secondary Materials (NHSMs): Construction and Demolition Wood, Recycling Process Residuals, and Creosote-Treated Railroad Ties” July 22, 2013. [Appendix C]

arise from participation in a voluntary Federal program. Affected entities are not required to manage the proposed additional NHSMs as non-waste fuels. As a result, this action may be considered voluntary under UMRA. Therefore, this action is not subject to the requirements of sections 202 or 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. In addition, this proposal will not impose direct compliance costs on small governments.

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 proposed rule will not impose direct compliance costs on state or local governments and will not preempt state law. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this action may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. Potential aspects associated with the categorical non-waste fuel determinations under this proposed rule may invoke minor indirect tribal implications to the extent that entities generating or consolidating these NHSMs on tribal lands could be

affected. However, any impacts are expected to be negligible.

EPA specifically solicits additional comment on this proposed action from tribal officials.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Based on the discussion below, the Agency found that the populations of children near potentially affected boilers are either not significantly greater than national averages, or in the case of landfills, may potentially result in reduced discharges near such populations.

The proposed rule, in conjunction with the corresponding CAA rules, may indirectly stimulate the increased fuel use of one or more of the three NHSMs by providing enhanced regulatory clarity and certainty. This increased fuel use may result in the diversion of a certain quantity of these NHSMs away from current baseline management practices. Any corresponding disproportionate impacts among children would depend upon whether children make up a disproportionate share of the population living near the affected units. Therefore, to assess the potential an indirect disproportionate effect on children, we conducted a demographic analysis for this population group surrounding CAA section 112 major source boilers, municipal solid waste landfills, and construction and demolition (C&D) landfills for the Major and Area Source Boilers rules and the CISWI rule.¹¹⁵ We assessed the share of the population under the age of 18 living within a three-mile (approximately five kilometers) radius of these facilities.

For major source boilers, our findings indicate that the percentage of the population in these areas under age 18 years is generally the same as the national average.¹¹⁶ In addition, while

¹¹⁵ The extremely large number of area source boilers and the absence of site-specific coordinates prevented us from assessing the demographics of populations located near these sources. In addition, we did not assess child population percentages surrounding cement kilns that may use some out-of-service railroad crossties for their thermal value.

¹¹⁶ U.S. EPA, Office of Resource Conservation and Recovery, *Summary of Environmental Justice Impacts for the Non-Hazardous Secondary Material (NHSM) Rule, the 2010 Commercial and Industrial Solid Waste Incinerator (CISWI) Standards, the*

the fuel source and corresponding emission mix for some of these boilers may change as an indirect response to this rule, emissions from these sources would remain subject to the protective CAA section 112 standards. For municipal solid waste and C&D landfills, we do not have demographic results specific to children. However, using the population below the poverty level as a rough surrogate for children, we found that within three miles of facilities that may experience diversions of one or more of these NHSMs, low-income populations, as a percent of the total population, are disproportionately high relative to the national average. Thus, to the extent that these NHSMs are diverted away from municipal solid waste or C&D landfills, any landfill-related emissions, discharges, or other negative activity potentially affecting low-income (children) populations living near these units are likely to be reduced. Finally, transportation emissions associated with the diversion of some of this material away from landfills to boilers are likely to be generally unchanged, while these emissions are likely to be reduced for on-site generators of paper recycling residuals that would reduce off-site shipments.

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

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

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

2010 Major Source Boiler NESHAP and the 2010 Area Source Boiler NESHAP. February 2011.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

EPA has concluded that it is not practicable to determine whether there would be disproportionately high and adverse human health or environmental effects on minority and/or low-income populations from this proposed rule. However, the overall level of emissions, or the emissions mix from affected boilers are not expected to change significantly because the three NHSMs proposed to be categorically listed as non-waste fuels are generally comparable to the types of fuels that these combustors would otherwise burn. Furthermore, these units remain subject to the protective standards established under CAA Section 112.

Our environmental justice demographics assessment conducted for the prior rulemaking¹¹⁷ remains relevant to this action. This assessment reviewed the distributions of minority and low-income groups living near potentially affected sources using U.S. Census blocks. A three-mile radius (approximately five kilometers) was examined in order to determine the demographic composition (*e.g.*, race, income, etc.) of these blocks for comparison to the corresponding national compositions. Findings from this analysis indicated that populations living within three miles of major source boilers represent areas with minority and low-income populations that are higher than the national averages. In these areas, the minority

share¹¹⁸ of the population was 33 percent, compared to the national average of 25 percent. For these same areas, the percent of the population below the poverty line (16 percent) was higher than the national average (13 percent).

In addition to the demographics assessment described above, we also considered the potential for non-combustion environmental justice concerns related to the potential incremental increase in NHSMs diversions from current baseline management practices. These may include the following:

- *Reduced upstream emissions resulting from the reduced production of virgin fuel:* Any reduced upstream emissions that may occur in response to reduced virgin fuel mining or extraction may result in a human health and/or environmental benefit to minority and low-income populations living near these projects.

- *Alternative materials transport patterns:* Transportation emissions associated with NHSMs diverted from landfills to boilers are likely to be similar, except for on-site paper recycling residuals, where the potential for less off-site transport to landfills may result in reduced truck traffic and emissions where such transport patterns may pass through minority or low-income communities.

- *Change in emissions from baseline management units:* The diversion of some of these NHSMs away from disposal in landfills may result in a marginal decrease in activity at or near these facilities. This may include non-adverse impacts, such as marginally reduced emissions, odors, groundwater and surface water impacts, noise pollution, and reduced maintenance cost to local infrastructure. Because municipal solid waste and C&D landfills were found to be located in areas where minority and low-income populations are disproportionately high relative to the national average, any reduction in activity and emissions around these facilities is likely to benefit (even if only marginally) the citizens living near these facilities.

Finally, this rule may help to accelerate the abatement of any existing stockpiles of these NHSM materials. To the extent that these stockpiles may have negative human health or environmental implications, minority and/or low-income populations that live near such stockpiles may experience marginal health or environmental

improvements. Aesthetics may also be improved in such areas.

As previously discussed, this RCRA action alone does not directly require any change in the management of these NHSMs. Any potential materials management changes, and corresponding impacts to minority and low-income communities, should be considered indirect responses to this rulemaking, and would only occur when this rule is implemented in conjunction with the corresponding CAA rules.

List of Subjects in 40 CFR Part 241

Environmental protection, Air pollution control, Waste treatment and disposal.

Dated: March 24, 2014.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, Title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 241—SOLID WASTES USED AS FUELS OR INGREDIENTS IN COMBUSTION UNITS

■ 1. The authority citation for part 241 continues to read as follows:

Authority: 42 U.S.C. 6903, 6912, 7429.

Subpart A—General

■ 2. Section 241.2 is amended by adding the definitions for “Construction and demolition (C&D)”, “Creosote treated railroad ties”, and “Paper recycling residuals” in alphabetical order to read as follows:

§ 241.2 Definitions.

* * * * *

Construction and demolition (C&D) wood means wood that is generated from the processing of debris from construction and demolition activities for the purposes of recovering wood. C&D wood from *construction* activities results from cutting wood down to size during installation or from purchasing more wood than a project ultimately requires. C&D wood from *demolition* activities results from dismantling buildings and other structures or removing materials during renovation.

* * * * *

Creosote treated railroad ties means railway support ties treated with a wood preservative containing creosols and phenols and made from coal tar oil.

* * * * *

Paper recycling residuals means the co-product material generated from the paper recycling process and is

¹¹⁷ U.S. EPA, Office of Resource Conservation and Recovery. *Summary of Environmental Justice Impacts for the Non-Hazardous Secondary Material (NHSM) Rule, the 2010 Commercial and Industrial Solid Waste Incinerator (CISWI) Standards, the 2010 Major Source Boiler NESHAP and the 2010 Area Source Boiler NESHAP*. February 2011.

¹¹⁸ This figure is for overall population minus white population and does not include the Census group defined as “White Hispanic.”

composed primarily of wet strength and short wood fibers that cannot be used to make new paper and paperboard products. The term paper processing residuals also includes fibers from old corrugated container rejects.

* * * * *

Subpart B—Identification of Non-Hazardous Secondary Materials That Are Solid Wastes When Used as Fuels or Ingredients in Combustion Units

■ 3. Section 241.3 is amended by revising paragraphs (b)(2), (c)(1) introductory text, and (d)(1)(iii) to read as follows:

§ 241.3 Standards and procedures for identification of non-hazardous secondary materials that are solid wastes when used as fuels or ingredients in combustion units.

* * * * *

(b) * * *

(2) [Reserved]

* * * * *

(c) * * *

(1) Submittal of an application to the Regional Administrator for the EPA Region where the facility or facilities are located or the Assistant Administrator for the Office of Solid Waste and Emergency Response for a determination that the non-hazardous secondary material, even though it has been transferred to a third party, has not been discarded and is indistinguishable in all relevant aspects from a fuel product. The determination will be based on whether the non-hazardous secondary material has not been discarded is a legitimate fuel as specified in paragraph (d)(1) of this section and on the following criteria:

* * * * *

(d) * * *

(1) * * *

(iii) The non-hazardous secondary material must contain contaminants or groups of contaminants at levels comparable in concentration to or lower than those in traditional fuel(s) which

the combustion unit is designed to burn. In determining which traditional fuel(s) a unit is designed to burn, persons may choose a traditional fuel that can be or is burned in the particular type of combustion unit, whether or not the unit is permitted to burn that traditional fuel. In comparing contaminants between traditional fuel(s) and a non-hazardous secondary material, persons can use data for traditional fuel contaminant levels compiled from national surveys, as well as contaminant level data from the specific traditional fuel being replaced. To account for natural variability in contaminant levels, persons can use the full range of traditional fuel contaminant levels, provided such comparisons also consider variability in non-hazardous secondary material contaminant levels. Such comparisons are to be based on a direct comparison of the contaminant levels in both the non-hazardous secondary material and traditional fuel(s) prior to combustion.

* * * * *

■ 4. Section 241.4 is amended by revising the section heading and adding paragraphs (a)(5), (6), and (7) to read as follows:

§ 241.4 Non-waste determinations for specific non-hazardous secondary materials when used as a fuel.

(a) * * *

(5) Construction and demolition (C&D) wood processed from C&D debris according to best management practices. Combustors of C&D wood must obtain a written certification from C&D processing facilities that the C&D wood has been processed by trained operators in accordance with best management practices. Best management practices for purposes of this categorical listing must include sorting by trained operators that excludes or removes the following materials from the final product fuel: Non-wood materials (*e.g.*, polyvinyl chloride and other plastics, drywall,

concrete, aggregates, dirt, and asbestos), and wood treated with creosote, pentachlorophenol, chromated copper arsenate, or other copper, chromium, or arsenical preservatives. In addition:

(i) C&D processing facilities that use positive sorting—where operators pick out desirable wood from co-mingled debris—must either:

(A) Exclude all painted wood from the final product fuel,

(B) Use X-ray Fluorescence to ensure that painted wood included in the final product fuel does not contain lead-based paint, or

(C) Require documentation that a building has been tested for and does not include lead-based paint before accepting demolition debris from that building.

(ii) C&D processing facilities that use negative sorting—where operators remove contaminated or otherwise undesirable materials from co-mingled debris—must remove fines (*i.e.*, small-sized particles that may contain relatively high concentrations of lead and other contaminants) and either:

(A) Remove painted wood,

(B) Use X-ray Fluorescence to detect and remove lead-painted wood, or

(C) Require documentation that a building has been tested for and does not include lead-based paint before accepting demolition debris from that building.

(6) Paper recycling residuals, including old corrugated cardboard (OCC) rejects, generated from the recycling of recovered paper and paperboard products and burned on-site by paper recycling mills whose boilers are designed to burn solid fuel.

(7) Creosote-treated railroad ties that are processed and combusted in units designed to burn both biomass and fuel oil.

* * * * *

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Part IV

Nuclear Regulatory Commission

10 CFR Parts 170 and 171

Revision of Fee Schedules; Fee Recovery for Fiscal Year 2014; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

[NRC–2013–0276]

RIN 3150–AJ32

Revision of Fee Schedules; Fee Recovery for Fiscal Year 2014

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires the NRC to recover through fees approximately 90 percent of its budget authority in Fiscal Year (FY) 2014, not including amounts appropriated for Waste Incidental to Reprocessing (WIR) and amounts appropriated for generic homeland security activities. These fees represent the cost of NRC services provided to applicants and licensees.

DATES: Submit comments by May 14, 2014. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date. Because OBRA–90, as amended, requires that the NRC collect the FY 2014 fees by September 30, 2014, requests for extension of the comment period will not be granted.

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–2013–0276. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: Carol.Gallagher@nrc.gov. For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

- *Email comments to:* Rulemaking.Comments@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission,

Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on accessing information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Arlette Howard, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1481, email: Arlette.Howard@nrc.gov.

SUPPLEMENTARY INFORMATION:

- I. Obtaining Information and Submitting Comments.
- II. Background
- III. Discussion
- IV. Section-by-Section Analysis
- V. Regulatory Flexibility Certification
- VI. Regulatory Analysis
- VII. Backfitting and Issue Finality
- VIII. Plain Writing
- IX. National Environmental Policy Act
- X. Paperwork Reduction Act Statement
- XI. Voluntary Consensus Standards
- XII. Availability of Guidance
- XIII. Availability of Documents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2013–0276 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2013–0276.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection 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. For the convenience of the reader, the ADAMS accession numbers are provided in a

table in the “Availability of Documents” section of this document.

- *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–2013–0276 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 your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS, and 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 into ADAMS.

II. Background

Over the past 40 years the NRC (and earlier as the Atomic Energy Commission (AEC), the NRC’s predecessor agency), has assessed and continues to assess fees to applicants and licensees to recover the cost of its regulatory program. The NRC’s cost recovery principles for fee regulation are governed by two major laws: (1) The Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 483(a)); and (2) OBRA–90 (42 U.S.C. 2214), as amended. The NRC is required each year, under OBRA–90, as amended, to recover approximately 90 percent of its budget authority, not including amounts appropriated for WIR, and amounts appropriated for generic homeland security activities (non-fee items), through fees to the NRC licensees and applicants. The following discussion explains the various court decisions, congressional mandates, and Commission policy that form the basis for the NRC’s current fee policy and cost recovery methodology, which in turn form the basis for this rulemaking.

Establishment of Fee Policy and Cost Recovery Methodology

In 1968, the AEC adopted its first license fee schedule in response to Title V of the IOAA. This statute authorized and encouraged Federal regulatory agencies to recover to the fullest extent possible costs attributable to services provided to identifiable recipients. The AEC established fees under part 170 of Title 10 of the *Code of Federal Regulations* (10 CFR) in two sections, §§ 170.21 and 170.31. Section 170.21 established a flat application fee for filing applications for nuclear power plant construction permits. Fees were set by a sliding scale depending on plant size; for construction permits and operating license fees, annual fees were levied on holders of Commission operating licenses under 10 CFR part 50. Section 170.31 established application fees and annual fees for materials licenses. Between 1971 and 1973, the 10 CFR part 170 fee schedules were adjusted to account for increased costs resulting from expanded services, which included health and safety inspection services and manufacturing licenses and environmental and antitrust reviews. The annual fees assessed by the Commission began to include inspection costs, and the material fee schedule expanded from 16 to 28 categories for fee assessment. During this period, the schedules continued to be modified based on the Commission's policy to recover costs attributable to identifiable beneficiaries for the processing of applications, permits and licenses, amendments to existing licenses, and health and safety inspections relating to the licensing process.

On March 4, 1974, the U.S. Supreme Court rendered major decisions in two cases, *National Cable Television Association, Inc. v. United States*, 415 U.S. 36 (1974) and *Federal Power Commission v. New England Power Company*, 415 U.S. 345 (1974), regarding the charging of fees by Federal agencies. The Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The Court, therefore, invalidated the Federal Power Commission's annual fee rule because its fee structure assessed annual fees against the regulated industry at large without considering whether anyone had received benefits from any Commission services during the year in question. As a result of these decisions, the AEC promptly eliminated annual licensing fees and issued refunds to

licensees, but left the remainder of the fee schedule unchanged.

In November 1974, the AEC published proposed revisions to its license fee schedule (39 FR 39734; November 11, 1974). The Commission reviewed public comments while simultaneously considering alternative approaches for the proper evaluation of expanding services and proper assessment based upon increasing costs of Commission services.

While this effort was underway, the Court of Appeals for the District of Columbia issued four opinions in fee cases—*National Cable Television Assoc. v. FCC*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters v. FCC*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association v. FCC*, 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc. v. FCC*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions invalidated the license fee schedules promulgated by the Federal Communications Commission, and they provided the AEC with additional guidance for the prompt adoption and promulgation of an updated licensee fee schedule.

On January 19, 1975, under the Energy Reorganization Act of 1974, the licensing and related regulatory functions of the AEC were transferred to the NRC. The NRC, prompted by recent court decisions concerning fee policy, developed new guidelines for use in fee development and the establishment of a new proposed fee schedule.

The NRC published a summary of guidelines as a proposed rule (42 FR 22149; May 2, 1977), and the Commission held a public meeting to discuss the summary of guidelines on May 12, 1977. A summary of the comments on the guidelines and the NRC's responses were published in the **Federal Register** (43 FR 7211; February 21, 1978).

The U.S. Court of Appeals for the Fifth Circuit upheld the Commission's fee guidelines on August 24, 1979, in *Mississippi Power and Light Co. v. U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act of 1954, as amended, and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by the National

Environmental Policy Act (42 U.S.C. 4321);

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

The NRC's Current Statutory Requirement for Cost Recovery Through Fees

In 1986, Congress passed the Consolidated Omnibus Budget Reconciliation Act (COBRA) (H.R. 3128), which required the NRC to assess and collect annual charges from persons licensed by the Commission. These charges, when added to other amounts collected by the NRC, totaled about 33 percent of the NRC's estimated budget. In response to this mandate and separate congressional inquiry on NRC fees, the NRC prepared a report on alternative approaches to annual fees and published the decision on annual fees for power reactor operating licenses in 10 CFR part 171 for public comment (51 FR 24078; July 1, 1986). The final rule (51 FR 33224; September 18, 1986) included a summary of the comments and the NRC's related responses. The decision was challenged in the D.C. Circuit Court of Appeals and upheld in its entirety in *Florida Power and Light Company v. United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

In 1987, the NRC retained the established annual and 10 CFR part 170 fee schedules in the **Federal Register** (51 FR 33224; September 18, 1986).

In 1988, the NRC was required to collect 45 percent of its budget authority through fees. The NRC published a proposed rule that included an hourly increase recommendation for public comment in the **Federal Register** (53 FR 24077; June 27, 1988). The NRC staff could not properly consider all comments received on the proposed rule. Therefore, on August 12, 1988, the NRC published an interim final rule in the **Federal Register** (53 FR 30423). The interim final rule was limited to changing the 10 CFR part 171 annual fees.

In 1989, the Commission was required to collect 45 percent of its budget authority through fees. The NRC published a proposed fee rule in the **Federal Register** (53 FR 24077; June 25, 1988). A summary of the comments and the NRC's related responses was published in the **Federal Register** (53 FR 52632; December 28, 1988).

On November 5, 1990, with respect to 10 CFR part 171, the Congress passed OBRA-90, requiring that the NRC collect 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund (NWF), through the assessment of fees. The OBRA-90 allowed the NRC to collect user fees for the recovery of the costs of providing special benefits to identifiable applicants and licensees in compliance with 10 CFR part 170 and under the authority of the IOAA (31 U.S.C. 9701). These fees recovered the cost of inspections, applications for new licenses and license renewals, and requests for license amendments. The OBRA-90 also allowed the NRC to recover annual fees under 10 CFR part 171 for generic regulatory costs not otherwise recovered through 10 CFR part 170 fees. In compliance with OBRA-90, the NRC adjusted its fee regulations in 10 CFR parts 170 and 171 to be more comprehensive without changing their underlying basis. The NRC published these regulations in a proposed rule for public comment in the **Federal Register** (54 FR 49763; December 1, 1989). The NRC held three public meetings to discuss the proposed changes and questions. A summary of comments and the NRC's related responses was published in the **Federal Register** (55 FR 21173; May 23, 1990).

In FYs 1991-2000, the NRC continued to comply with OBRA-90 requirements in its proposed and final rules. In 1991, the NRC's annual fee rule methodology was challenged and upheld by the DC Circuit Court of Appeals in *Allied Signal v. NRC*, 988 F.2d 146 (D.C. Cir. 1993).

The FY 2001 Energy and Water Development Appropriation Act amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount was 90 percent in FY 2005.

The FY 2006 Energy and Water Development Appropriation Act extended this 90 percent fee recovery requirement for FY 2006. Section 637 of the Energy Policy Act of 2005 made the 90 percent fee recovery requirement permanent in FY 2007.

In addition to the requirements of OBRA-90, as amended, the NRC was also required to comply with the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996. This Act encouraged small businesses to participate in the regulatory process, and required agencies to develop more accessible sources of information on regulatory and reporting requirements for small businesses and create a small entity

compliance guide. The NRC, in order to ensure equitable fee distribution among all licensees, developed a fee methodology specifically for small entities that consisted of a small entity definition and the Small Business Administration's most common receipts-based size standards as described under the North American Industry Classification System (NAICS) identifying industry codes. The NAICS is the standard used by Federal statistical agencies to classify business establishments for the purposes of collecting, analyzing, and publishing statistical data related to the U.S. business economy. The purpose of this fee methodology was to lessen the financial impact on small entities through the establishment of a maximum fee at a reduced rate for qualifying licensees.

In FY 2009, the NRC computed the small entity fee based on a biennial adjustment of 39 percent, a fixed percent applied to the prior 2-year weighted average for all fee categories that have small entity licensees. The NRC also used 39 percent to compute the small entity annual fee for FY 2005, the same year the agency was required to recover only 90 percent of its budget authority. The methodology allowed small entity licensees to be able to predict changes in their fees in the biennial year based on the materials users' fees for the previous 2 years. Using a 2-year weighted average lessened the fluctuations caused by programmatic and budget variables within the fee categories for the majority of small entities. The agency also determined that there should be a lower-tier annual fee based on 22 percent of the maximum small entity annual fee to further reduce the impact of fees.

In FY 2011, the NRC applied this methodology, which would have resulted in an upper-tier small entity fee of \$3,300, an increase of 74 percent or \$1,400 from FY 2009, and a lower-tier small entity fee of \$700, an increase of 75 percent or \$300 from FY 2009. The NRC determined that implementing this increase would have a disproportionate impact upon small licensees and performed a trend analysis to calculate the appropriate fee tier levels. From FY 2000 to FY 2008, \$2,300 was the maximum upper-tier small entity fee and \$500 was the maximum lower-tier small entity fee. In order to lessen financial hardship for small entity licensees, the NRC concluded that for FY 2011 \$2,300 should be the maximum upper-tier small entity fee and \$500 should be the lower-tier small entity fee.

In FY 2013, the NRC staff performed a biennial review using the fee methodology developed in FY 2009 that applies a fixed percentage of 39 percent to the prior 2-year weighted average of materials users' fees. This methodology disproportionately impacted NRC's small licensees compared to other licensees; therefore, the NRC staff limited the increase to 21 percent, the same as FY 2011. The change resulted in a fee of \$2,800 for an upper-tier small entity and \$600 for a lower-tier small entity for FY 2013.

The NRC staff believes these fees are reasonable and provide relief to small entities while at the same time recovering from those licensees some of the NRC's costs for activities that benefit them. For this fee rule, the small entity fees would remain unchanged. The next biennial review will be conducted in FY 2015.

III. Discussion

In compliance with OBRA-90, as amended, and the AEA, the NRC proposes to amend its fee schedules for 10 CFR parts 170 and 171 to recover approximately 90 percent of its FY 2014 budget authority, less the amounts appropriated for WIR, the NWF, and generic homeland securities. The 10 CFR part 170 user fees, under the authority of the IOAA, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. For example, the NRC assesses these fees to cover the costs of inspections, applications for new licenses and license renewals, and requests for license amendments. The 10 CFR part 171 annual fees recover generic regulatory costs not otherwise recovered through 10 CFR part 170 fees.

FY 2014 Fee Collection

The NRC received total appropriations of \$1,055.9 million for FY 2014 based on the Consolidated Appropriations Act (Public Law 113-76), signed by President Obama on January 17, 2014. The 2014 proposed fee rule is based on the anticipated distribution of funds for agency needs at the time of its development. The final rule will be adjusted to reflect any changes to the distribution of the NRC's FY 2014 appropriation.

Based on OBRA-90, as amended, the NRC is required to recover \$930.7 million through 10 CFR part 170 licensing and inspections and 10 CFR part 171 annual fees for FY 2014. This amount excludes non-fee items for WIR activities totaling \$1.4 million, Inspector General services for the Defense Nuclear Facilities Safety Board totaling \$0.9 million and generic homeland security

activities totaling \$21.8 million. The fee recovery amount is \$66.8 million more than the amount estimated for recovery in FY 2013, an increase of 7.7 percent. The FY 2014 fee recovery amount is further decreased by \$11.8 million to account for net collections as a result of

billing adjustments (sum of unpaid current year invoices (estimated) minus payments for prior year invoices). This leaves approximately \$918.9 million to be billed as fees in FY 2014 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees.

Table I summarizes the proposed budget and fee recovery amounts for FY 2014. The FY 2013 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE I—BUDGET AND FEE RECOVERY AMOUNTS

[Dollars in millions]

	FY 2013 final rule	FY 2014 proposed rule
Total Budget Authority	\$985.6	\$1,055.9
Less Non-Fee Items	- 25.7	- 21.8
Balance	\$959.9	\$1,034.1
Fee Recovery Rate	90%	90%
Total Amount to be Recovered:	864.0	930.7
10 CFR Part 171 Billing Adjustments:		
Unpaid Current Year Invoices (estimated)	2.2	0.5
Less Current Year from Collections (Terminated—Operating Reactors)	- 4.6	0
Less Payments Received in Current Year for Previous Year Invoices (estimated)	- 2.0	- 12.3
Subtotal	- 4.4	- 11.8
Amount to be Recovered through 10 CFR Parts 170 and 171 Fees	\$859.6	\$918.9
Less Estimated 10 CFR Part 170 Fees	- 327.1	- 324.5
Less Prior Year Unbilled 10 CFR Part 170 Fees	- 20.9	- 0
10 CFR Part 171 Fee Collections Required	\$511.6	\$594.4

Based on the 90 percent estimated recovery amount of \$930.7 million, the NRC estimates that \$324.5 million will be recovered from 10 CFR part 170 fees in FY 2014, which represents a 6.7 percent decrease as compared to 10 CFR part 170 collections of \$348 million for FY 2013.

Hourly Rate

The NRC’s hourly rate is used in assessing full cost fees for specific services provided, as well as flat fees for certain application reviews. The NRC is proposing to change the current hourly rate of \$272 to \$279 in FY 2014. This rate would be applicable to all activities for which fees are assessed under §§ 170.21 and 170.31.

The FY 2014 hourly rate is 2.6 percent higher than the FY 2013 hourly rate of

\$272. The increase in the hourly rate is due primarily to higher agency-budgeted resources and a decrease in the number of direct full-time equivalents (FTE) compared to FY 2013.

The NRC’s hourly rate is derived by dividing the sum of recoverable budgeted resources for: (1) Mission-direct program salaries and benefits; (2) mission-indirect program support; and (3) agency corporate support and the Inspector General (IG), by mission-direct FTE hours. The mission-direct FTE hours are the product of the mission-direct FTE multiplied by the hours per direct FTE. The only budgeted resources excluded from the hourly rate are those for contract activities related to mission-direct and fee-relief activities.

In FY 2013, the NRC used 1,351 hours per direct FTE, a decrease of 20 hours

from FY 2012, to calculate the hourly fees. The NRC has reviewed data from its time and labor system to determine if the annual direct hours worked per direct FTE estimate requires updating for the FY 2014 fee rule. Based on this review of the most recent data available, the NRC determined that 1,375 hours is the best estimate of direct hours worked annually per direct FTE. This estimate excludes all indirect activities such as training, general administration, and leave.

Table II shows the results of the hourly rate calculation methodology. The FY 2013 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE II—HOURLY RATE CALCULATION

	FY 2013 final rule	FY 2014 proposed rule
Mission-Direct Program Salaries & Benefits	\$345.1	\$359.2
Mission-Indirect Program Support	\$19.7	\$21.0
Agency Corporate Support, and the IG	\$474.8	\$486.0
Subtotal	\$839.6	\$866.2
Less Offsetting Receipts	- \$0.0	- \$0.0
Total Budget Included in Hourly Rate (Millions of Dollars)	\$839.6	\$866.2
Mission-Direct FTE (Whole numbers)	2,285	2,254
Professional Hourly Rate (Total Budget Included in Hourly Rate divided by Mission-Direct FTE Hours) (Whole Numbers)	\$272	\$279

As shown in Table II, dividing the FY 2014 \$866.2 million budget amount included in the hourly rate by total

mission-direct FTE hours (2,254 FTE times 1,375 hours) results in an hourly

rate of \$279. The hourly rate is rounded to the nearest whole dollar.

Flat Application Fee Changes

The NRC is proposing to adjust the current flat application fees in §§ 170.21 and 170.31 to reflect the revised hourly rate of \$279. These flat fees are calculated by multiplying the average professional staff hours needed to process the licensing actions by the proposed professional hourly rate for FY 2014. The agency estimates the average professional staff hours needed to process licensing actions every other year as part of its biennial review of fees performed in compliance with the Chief Financial Officers Act of 1990. The NRC last performed this review as part of the FY 2013 fee rulemaking. The higher hourly rate of \$279 is the primary reason for the increase in application fees.

The amounts of the materials licensing flat fees are rounded so that the fees would be convenient to the user and the effects of rounding would be minimal. Fees under \$1,000 are rounded to the nearest \$10, fees that are greater than \$1,000 but less than \$100,000 are rounded to the nearest \$100, and fees that are greater than \$100,000 are rounded to the nearest \$1,000.

The proposed licensing flat fees are applicable for fee categories K.1. through K.5. of § 170.21, and fee categories 1.C. through 1.D., 2.B. through 2.F., 3.A. through 3.S., 4.B. through 9.D., 10.B., 15.A. through 15.L., 15.R., and 16 of § 170.31. Applications filed on or after the effective date of the FY 2014 final fee rule would be subject to the revised fees in the final rule.

Application of Fee-Relief and Low-Level Waste (LLW) Surcharge

The NRC proposes to assess a total of \$2.0 million to licensees' annual fees for both fee-relief activities and LLW surcharge based on their share of the fee recoverable budget authority. For this rulemaking, the NRC also proposes to establish rebaselined annual fees by changing the number of licensees in accordance to Public Law 112–10.

Specifically, the NRC would use its fee-relief surplus to decrease all licensees' annual fees, based on their percentage share of the budget. The NRC would apply the 10 percent of its budget that is excluded from fee recovery under OBRA–90, as amended (fee relief), to offset the total budget allocated for activities that do not directly benefit

current NRC licensees. The budget for these fee-relief activities is totaled and then reduced by the amount of the NRC's fee relief. Any difference between the fee-relief and the budgeted amount of these activities results in a fee-relief adjustment (increase or decrease) to all licensees' annual fees, based on their percentage share of the budget, which is consistent with the existing fee methodology.

The FY 2014 budgetary resources for the NRC's fee-relief activities are \$102.2 million. The NRC's 10-percent fee-relief amount in FY 2014 is \$103.4 million, leaving a \$1.2 million surplus that would decrease all licensees' annual fees based on their percentage share of the budget. The FY 2014 budget for fee-relief activities increased from FY 2013 due to factors such as increased rulemaking activities for research and test reactors, agreement state travel, and a reduction in decommissioning billings under 10 CFR part 170.

Table III summarizes the fee-relief activities for FY 2014. The FY 2013 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE III—FEE-RELIEF ACTIVITIES
[Dollars in millions]

Fee-relief activities	FY 2013 Budgeted costs	FY 2014 Budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:		
a. International activities	\$10.2	\$11.2
b. Agreement State oversight	10.3	12.6
c. Scholarships and Fellowships	16.4	18.9
d. Medical Isotope Production	3.5	3.1
2. Activities not assessed under 10 CFR part 170 licensing and inspection fees or 10 CFR part 171 annual fees based on existing law or Commission policy:		
a. Fee exemption for nonprofit educational institutions	10.2	11.9
b. Costs not recovered from small entities under 10 CFR 171.16(c)	7.7	8.4
c. Regulatory support to Agreement States	16.3	17.9
d. Generic decommissioning/reclamation (not related to the power reactor and spent fuel storage fee classes)	13.9	17.2
e. <i>In Situ</i> leach rulemaking and unregistered general licensees	1.3	1.0
Total fee-relief activities	89.8	102.2
Less 10 percent of the NRC's total FY budget (less non-fee items)	– 96.0	– 103.4
Fee-Relief Adjustment to be Allocated to All Licensees' Annual Fees	– 6.2	– 1.2

Table IV shows how the NRC would allocate the \$1.2 million fee-relief assessment adjustment to each license fee class. As explained previously, the NRC would allocate this fee-relief adjustment to each license fee class based on the percent of the budget for that fee class compared to the NRC's total budget. The fee-relief surplus adjustment is subtracted from the

required annual fee recovery for each fee class.

Separately, the NRC has continued to allocate the LLW surcharge based on the volume of LLW disposal of three classes of licenses: Operating reactors, fuel facilities, and materials users. Because LLW activities support NRC licensees, the costs of these activities are recovered through annual fees. In FY

2014, this allocation percentage would remain the same as FY 2013 based on a recent review of data by fee class.

Table IV also shows the allocation of the LLW surcharge activity. For FY 2014, the total budget allocated for LLW activity is \$3.2 million. (Individual values may not sum to totals due to rounding.)

TABLE IV—ALLOCATION OF FEE-RELIEF ADJUSTMENT AND LLW SURCHARGE, FY 2014
[Dollars in millions]

	LLW surcharge		Fee-relief adjustment		Total
	Percent	\$	Percent	\$	
Operating Power Reactors	53.0	1.7	86.5	-1.1	0.6
Spent Fuel Storage/Reactor Decommissioning	—	—	3.6	0.0	0.0
Research and Test Reactors	—	—	0.3	0.0	0.0
Fuel Facilities	37.0	1.2	5.2	-0.1	1.1
Materials Users	10.0	0.3	2.8	-0.0	0.3
Transportation	—	—	0.5	-0.0	0.0
Uranium Recovery	—	—	1.2	-0.0	0.0
Total	100.0	3.2	100.0	-1.2	2.0

Annual Fee Policy Change

The staff examined 10 CFR 171.15(a) regarding independent spent fuel storage installation (ISFSI) licenses and determined that the current regulations are inconsistent with how other classes of licensees are assessed annual fees based on operational status. Under 10 CFR part 171.15(a), licensees for new nuclear reactors under 10 CFR part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” may not operate a facility and are not assessed annual fees until the Commission determines that the acceptance criteria in a combined license have been met as stated under 10 CFR 52.103(g).

However, licensees under 10 CFR part 72, “Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste,” that do not hold licenses under 10 CFR part 50, “Domestic Licensing of Production and Utilization Facilities,” or 10 CFR part 52 must pay an annual fee regardless of operational status. This creates a regulatory inconsistency because the NRC’s current fee regulations fail to consider the Commission’s requirement that 10 CFR part 72 licensees notify the Commission of their readiness to begin operations at least 90 days prior to the first storage of spent fuel, high-level waste, or reactor-related Greater than Class C waste in an ISFSI or a monitored retrievable storage installation.

In the cases of licensees under both 10 CFR part 72 and 10 CFR part 52, the Commission ultimately determines a licensee’s operational status through established criteria that either requires a licensee to notify the Commission of its

readiness to operate or the Commission’s finding that acceptance criteria in the combined license have been met before operation of a facility. The OBRA-90, as amended, requires the NRC to fairly and equitably recover the costs of providing regulatory services in its collection of fees from licensees. Therefore, the NRC proposes to modify 10 CFR 171.15(a) to allow an ISFSI licensee to be charged an annual fee when the licensee has the ability to use or to derive benefit from the license; this change would mirror the practice for licensees under the power reactor and fuel cycle facility fee categories.

Revised Annual Fees

The NRC is required to establish rebaselined annual fees based on Public Law 112-10, which includes updating the number of NRC licensees in the FY 2014 fee calculations. Therefore, the NRC proposes to revise its annual fees in §§ 171.15 and 171.16 for FY 2014 to recover approximately 90 percent of the NRC’s FY 2014 budget authority, less non-fee amounts and the estimated amount to be recovered through 10 CFR part 170 fees. The estimated 10 CFR part 170 collections for this proposed rule total \$324.5 million, a decrease of \$23.4 million from the FY 2013 fee rule. The total amount to be recovered through annual fees for this proposed rule is \$594.4 million, an increase of \$82.8 million from the FY 2013 final rule. The required annual fee collection in FY 2013 was \$511.6 million.

The Commission has determined (71 FR 30721; May 30, 2006) that the agency should proceed with a presumption in favor of rebaselining when calculating annual fees each year. Under this

method, the NRC’s budget is analyzed in detail, and budgeted resources are allocated to fee classes and categories of licensees. The Commission expects that for most years there will be budgetary and other changes that warrant the use of the rebaselining method.

For FY 2014, the NRC’s total fee recoverable budget, as mandated by law, is \$930.7 million, an increase of \$66.8 million compared to FY 2013. The FY 2014 budget was allocated to the appropriate fee class based on budgeted activities. As compared with the FY 2013 annual fees, the FY 2014 proposed rebaselined fees decrease for three classes—spent fuel storage/reactor and decommissioning, fuel facilities, and U.S. Department of Energy (DOE) Transportation Activities. The annual fees increase for four fee classes—operating reactors, research and test reactors, materials users, and uranium recovery licensees.

The factors affecting all annual fees include the distribution of budgeted costs to the different classes of licenses (based on the specific activities the NRC will perform in FY 2014), the estimated 10 CFR part 170 collections for the various classes of licenses, and allocation of the fee-relief surplus adjustment to all fee classes. The percentage of the NRC’s budget not subject to fee recovery remains at 10 percent for FY 2014, the same as FY 2013.

Table V shows the rebaselined fees for FY 2014 for a representative list of categories of licensees. The FY 2013 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE V—REBASELINED ANNUAL FEES

Class/category of licenses	FY 2013 final annual fee	FY 2014 proposed annual fee
Operating Power Reactors (Including Spent Fuel Storage/Reactor Decommissioning Annual Fee)	\$4,390,000	\$5,328,000

TABLE V—REBASELINED ANNUAL FEES—Continued

Class/category of licenses	FY 2013 final annual fee	FY 2014 proposed annual fee
Spent Fuel Storage/Reactor Decommissioning	231,000	224,000
Research and Test Reactors (Nonpower Reactors)	81,600	84,500
High Enriched Uranium Fuel Facility	6,997,000	6,329,000
Low Enriched Uranium Fuel Facility	2,633,000	2,178,000
UF ₆ Conversion and Deconversion Facility	1,429,000	1,293,000
Conventional Mills	27,900	33,900
Typical Materials Users:		
Radiographers (Category 3O)	27,200	29,800
Well Loggers (Category 5A)	12,600	13,600
Gauge Users (Category 3P)	6,400	6,800
Broad Scope Medical (Category 7B)	32,900	35,700

The work papers that support this proposed rule show in detail the allocation of the NRC’s budgeted resources for each class of licenses and how the fees are calculated. The work papers are available as indicated in Section XIII, Availability of Documents, of this document.

Paragraphs a. through h. of this section describe budgetary resources allocated to each class of licenses and the calculations of the rebaselined fees. Individual values in the tables

presented in this section may not sum to totals due to rounding.

a. Fuel Facilities

The FY 2014 budgeted costs to be recovered in the annual fees assessment to the fuel facility class of licenses (which includes licensees in fee categories 1.A.(1)(a), 1.A.(1)(b), 1.A.(2)(a), 1.A.(2)(b), 1.A.(2)(c), 1.E., and 2.A.(1) under § 171.16) are approximately \$29.1 million. This value is based on the full cost of budgeted resources associated with all activities that support this fee class, which is

reduced by estimated 10 CFR part 170 collections and adjusted for allocated generic transportation resources and fee-relief. In FY 2014, the LLW surcharge for fuel facilities is added to the allocated fee-relief adjustment (see Table IV in Section III.B.1, “Application of Fee-Relief and Low-Level Waste Surcharge,” of this document). The summary calculations used to derive this value are presented in Table VI for FY 2014, with FY 2013 values shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES
[Dollars in millions]

Summary fee calculations	FY 2013 final	FY 2014 proposed
Total budgeted resources	\$50.7	\$47.2
Less estimated 10 CFR part 170 receipts	– 19.5	– 19.2
Net 10 CFR part 171 resources	31.2	28.0
Allocated generic transportation	+0.8	0.6
Fee-relief adjustment/LLW surcharge	+0.9	1.1
Billing adjustments	– 0.0	– 0.6
Total required annual fee recovery	32.9	29.1

The decrease in total budgeted resources for the fuel facilities fee class from FY 2013 to FY 2014 is primarily due to construction delays from the Fuel Cycle Oversight Process. The NRC allocates the total required annual fee recovery amount to the individual fuel facility licensees, based on the effort/fee determination matrix developed for the FY 1999 final fee rule (64 FR 31447; June 10, 1999). In the matrix included in the publicly-available NRC work papers, licensees are grouped into categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety

and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

This methodology is adaptable to changes in the number of licensees or certificate holders, licensed or certified material and/or activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee, as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee

amends its license/certificate (e.g., decommissioning or license termination) that results in it not being subject to 10 CFR part 171 costs applicable to the fee class, then the budgeted costs for the safety and/or safeguards components will be spread among the remaining fuel facility licensees/certificate holders.

The methodology is applied as follows. First, a fee category is assigned, based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully use a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Second, the category and license/certificate information are used to determine

where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities.

Each year, the NRC's fuel facility project managers and regulatory analysts determine the level of effort associated with regulating each of these facilities. This is done by assigning, for each fuel facility, separate effort factors for the safety and safeguards activities associated with each type of regulatory

activity. The matrix includes 10 types of regulatory activities, including enrichment and scrap/waste-related activities (see the work papers for the complete list). Effort factors are assigned as follows: One (low regulatory effort), five (moderate regulatory effort), and 10 (high regulatory effort). The NRC then totals separate effort factors for safety and safeguard activities for each fee category.

The effort factors for the various fuel facility fee categories are summarized in

Table VII. The value of the effort factors shown, as well as the percent of the total effort factor for all fuel facilities, reflects the total regulatory effort for each fee category (not per facility). This results in spreading of costs to other fee categories. The Uranium Enrichment fee category factors have shifted with minimal increases and decreases between safety and safeguards factors compared to FY 2013.

TABLE VII—EFFORT FACTORS FOR FUEL FACILITIES [FY 2014]

Facility type (fee category)	Number of facilities	Effort factors (percent of total)	
		Safety	Safeguards
High-Enriched Uranium Fuel (1.A.(1)(a))	2	89 (38.5)	97 (49.2)
Low-Enriched Uranium Fuel (1.A.(1)(b))	3	70 (30.3)	26 (13.2)
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1	3 (1.3)	15 (7.6)
Hot Cell (1.A.(2)(c))	1	6 (2.6)	3 (1.5)
Uranium Enrichment (1.E)	2	51 (22.1)	49 (24.9)
UF ₆ Conversion and Deconversion (2.A.(1))	1	12 (5.2)	7 (3.6)

For FY 2014, the total budgeted resources for safety activities, before the fee-relief adjustment is made, are \$15.1 million. This amount is allocated to each fee category based on its percent of the total regulatory effort for safety activities. For example, if the total effort factor for safety activities for all fuel facilities is 100, and the total effort factor for safety activities for a given fee

category is 10, that fee category will be allocated 10 percent of the total budgeted resources for safety activities. Similarly, the budgeted resources amount of \$12.9 million for safeguards activities is allocated to each fee category based on its percent of the total regulatory effort for safeguards activities. The fuel facility fee class' portion of the fee-relief adjustment,

– \$0.1 million, is allocated to each fee category based on its percent of the total regulatory effort for both safety and safeguards activities. The annual fee per licensee is then calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category. The fee (rounded) for each facility is summarized in Table VIII.

TABLE VIII—ANNUAL FEES FOR FUEL FACILITIES

Facility type (fee category)	FY 2014 proposed annual fee
High-Enriched Uranium Fuel (1.A.(1)(a))	\$6,329,000
Low-Enriched Uranium Fuel (1.A.(1)(b))	2,178,000
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1,225,000
Hot Cell (and others) (1.A.(2)(c))	613,000
Uranium Enrichment (1.E.)	3,403,000
UF ₆ Conversion and Deconversion (2.A.(1))	1,293,000

b. Uranium Recovery Facilities

The total FY 2014 budgeted costs to be recovered through annual fees assessed to the uranium recovery class

(which includes licensees in fee categories 2.A.(2)(a), 2.A.(2)(b), 2.A.(2)(c), 2.A.(2)(d), 2.A.(2)(e), 2.A.(3), 2.A.(4), 2.A.(5), and 18.B. under

§ 171.16) are approximately \$1.2 million. The derivation of this value is shown in Table IX, with FY 2013 values shown for comparison purposes.

TABLE IX—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES [Dollars in millions]

Summary fee calculations	FY 2013 final	FY 2014 proposed
Total budgeted resources	\$9.9	\$10.9
Less estimated 10 CFR part 170 receipts	– 8.9	– 9.5
Net 10 CFR part 171 resources	1.0	1.3
Allocated generic transportation	N/A	N/A
Fee-relief adjustment	– 0.0	– 0.0
Billing adjustments	– 0.0	– 0.1

TABLE IX—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES—Continued
[Dollars in millions]

Summary fee calculations	FY 2013 final	FY 2014 proposed
Total required annual fee recovery	1.0	1.2

The increase in total budgeted resources and annual fees allocated to uranium recovery in FY 2014 is primarily due to an increase in environmental reviews, inspections, and licensing actions.

Since FY 2002, the NRC has computed the annual fee for the uranium recovery fee class by allocating the total annual fee amount for this fee class between the DOE and the other licensees in this fee class. The NRC regulates DOE's Title I and Title II activities under the Uranium Mill Tailings Radiation Control Act

(UMTRCA). The Congress established the two programs, Title I and Title II, under UMTRCA to protect the public and the environment from uranium milling. The UMTRCA Title I program is for remedial action at abandoned mill tailings sites where tailings resulted largely from production of uranium for the weapons program. The NRC also regulates DOE's UMTRCA Title II program, which is directed toward uranium mill sites licensed by the NRC or Agreement States in or after 1978.

In FY 2014, the annual fee assessed to DOE includes recovery of the costs

specifically budgeted for the NRC's UMTRCA Title I and II activities, plus 10 percent of the remaining annual fee amount, including generic/other costs (minus 10 percent of the fee-relief adjustment), for the uranium recovery class. The NRC assesses the remaining 90 percent generic/other costs minus 90 percent of the fee-relief adjustment, to the other NRC licensees in this fee class that are subject to annual fees.

The costs to be recovered through annual fees assessed to the uranium recovery class are shown in Table X.

TABLE X—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FEE CLASS

Summary of costs:	FY 2014 proposed annual fee
DOE Annual Fee Amount (UMTRCA Title I and Title II) General Licenses: UMTRCA Title I and Title II budgeted costs less 10 CFR part 170 receipts	\$774,185
10 percent of generic/other uranium recovery budgeted costs	42,009
10 percent of uranium recovery fee-relief adjustment	- 1,448
Total Annual Fee Amount for DOE (rounded)	815,000
Annual Fee Amount for Other Uranium Recovery Licenses:	
90 percent of generic/other uranium recovery budgeted costs less the amounts specifically budgeted for Title I and Title II activities	378,082
90 percent of uranium recovery fee-relief adjustment	- 13,035
Total Annual Fee Amount for Other Uranium Recovery Licenses	365,047

The DOE fee would increase by 16.4 percent in FY 2014 compared to FY 2013 due to increased budgetary resources for UMTRCA activities. Again, the annual fee for uranium recovery licensees would increase due to environmental reviews, inspections, and licensing actions.

The NRC will continue to use a matrix, which is included in the work papers (ADAMS Accession No. ML14064A394), to determine the level of effort associated with conducting the generic regulatory actions for the different (non-DOE) licensees in this fee class. The weights derived in this matrix are used to allocate the approximately \$378,082 annual fee amount to these licensees. The use of this uranium recovery annual fee matrix was established in the FY 1995 final fee rule (60 FR 32217; June 20, 1995). The FY 2014 matrix is described as follows.

First, the methodology identifies the categories of licensees included in this fee class (besides DOE). These categories are: Conventional uranium mills and

heap leach facilities; uranium *In Situ* Recovery (ISR) and resin ISR facilities mill tailings disposal facilities, as defined in Section 11e.(2) of the Atomic Energy Act (11e.(2) disposal facilities); and uranium water treatment facilities.

Second, the matrix identifies the types of operating activities that support and benefit these licensees. The activities related to generic decommissioning/reclamation are not included in the matrix because they are included in the fee-relief activities. Therefore, they are not a factor in determining annual fees. The activities included in the matrix are operations, waste operations, and groundwater protection. The relative weight of each type of activity is then determined, based on the regulatory resources associated with each activity. The operations, waste operations, and groundwater protection activities have weights of 0, 5, and 10, respectively, in the matrix.

Each year, the NRC determines the level of benefit to each licensee for

generic uranium recovery program activities for each type of generic activity in the matrix. This is done by assigning, for each fee category, separate benefit factors for each type of regulatory activity in the matrix. Benefit factors are assigned on a scale of 0 to 10 as follows: 0 (no regulatory benefit), 5 (moderate regulatory benefit), and 10 (high regulatory benefit). These benefit factors are first multiplied by the relative weight assigned to each activity (described previously). The NRC then calculates total and per licensee benefit factors for each fee category. Therefore, these benefit factors reflect the relative regulatory benefit associated with each licensee and fee category.

Table XI displays the benefit factors per licensee and per fee category, for each of the non-DOE fee categories included in the uranium recovery fee class as follows:

TABLE XI—BENEFIT FACTORS FOR URANIUM RECOVERY LICENSES

Fee category	Number of licensees	Benefit factor per licensee	Total value	Benefit factor percent total
Conventional and Heap Leach mills (2.A.(2)(a))	1	150	150	9
Basic <i>In Situ</i> Recovery facilities (2.A.(2)(b))	6	190	1,140	71
Expanded <i>In Situ</i> Recovery facilities (2.A.(2)(c))	1	215	215	13
11e.(2) disposal incidental to existing tailings sites (2.A.(4))	1	85	85	5
Uranium water treatment (2.A.(5))	1	25	25	2
Total	10	665	1,615	100

Applying these factors to the approximately \$365,047 in budgeted costs to be recovered from non-DOE uranium recovery licensees results in the total annual fees for each fee category. The annual fee per licensee is calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category, as summarized in Table XII.

TABLE XII—ANNUAL FEES FOR URANIUM RECOVERY LICENSEES [Other than DOE]

Facility type (fee category)	FY 2014 proposed annual fee
Conventional and Heap Leach mills (2.A.(2)(a))	\$33,900
Basic <i>In Situ</i> Recovery facilities (2.A.(2)(b))	42,900
Expanded <i>In Situ</i> Recovery facilities (2.A.(2)(c))	48,600
11e.(2) disposal incidental to existing tailings sites (2.A.(4))	19,200
Uranium water treatment (2.A.(5))	5,700

c. Operating Power Reactors

The total budgeted costs to be recovered from the power reactor fee class in FY 2014 in the form of annual fees is \$510.4 million, as shown in Table XIII. The FY 2013 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XIII—ANNUAL FEE SUMMARY CALCULATIONS FOR OPERATING POWER REACTORS [Dollars in millions]

Summary fee calculations	FY 2013 final	FY 2014 proposed
Total budgeted resources	\$734.7	\$799.3
Less estimated 10 CFR part 170 receipts	- 303.8	- 280.4
Net 10 CFR part 171 resources	430.9	518.9
Allocated generic transportation	1.3	1.1
Fee-relief adjustment/LLW surcharge	- 3.4	0.6
Billing adjustment	0.2	- 10.2
2nd billing adjustment (terminated license)	- 4.6	0.0
Total required annual fee recovery	424.2	510.4

The budgetary resources primarily increase in FY 2014 due to increased resources to support Fukushima Near-Term Task Force (NTTF) recommendations; Commission-directed high- and medium-priority rulemaking activities; the Force on Force program; and the maintenance, operation and eventual replacement of the Reactor Program System (RPS).

The annual fees for power reactors increase primarily as a result of decreased 10 CFR part 170 billings, the decline in current year licensing actions, delays in major design certification applications and combined operating licensing, and the shutdown of two operating reactors (San Onofre

Nuclear Generating Station Units 2 and 3). The budgeted costs to be recovered through annual fees to power reactors are divided equally among the 100 power reactors licensed to operate, resulting in an FY 2014 annual fee of \$5,104,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the FY 2014 spent fuel storage/reactor decommissioning annual fee of \$224,000. The total FY 2014 annual fee is \$5,328,000 for each power reactor licensed to operate. The annual fees for power reactors are presented in § 171.15.

d. Spent Fuel Storage/Reactors in Decommissioning

For FY 2014, budgeted costs of \$27.5 million for spent fuel storage/reactor decommissioning would be recovered through annual fees assessed to 10 CFR part 50 power reactors, and to 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite would not be subject to these annual fees. Table XIV shows the calculation of this annual fee amount. The FY 2013 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XIV—ANNUAL FEE SUMMARY CALCULATIONS FOR THE SPENT FUEL STORAGE/REACTOR IN DECOMMISSIONING FEE CLASS

[Dollars in millions]

Summary fee calculations	FY 2013 final	FY 2014 proposed
Total budgeted resources	\$33.4	\$32.7
Less estimated 10 CFR part 170 receipts	- 5.4	- 5.4
Net 10 CFR part 171 resources	28.0	27.3
Allocated generic transportation	0.6	0.6
Fee-relief adjustment	- 0.2	0.0
Billing adjustments	0.0	- 0.4
Total required annual fee recovery	28.4	27.5

The budgetary resources for this fee class are reduced in FY 2014 due to a decline in Commission-directed improvements for storage and transportation processes. The required annual fee recovery amount is divided equally among 123 licensees, resulting

in an FY 2014 annual fee of \$224,000 per licensee.

e. Research and Test Reactors (Non-Power Reactors)

Approximately \$340,000 in budgeted costs would be recovered through annual fees assessed to the test and

research reactor class of licenses for FY 2014. Table XV summarizes the annual fee calculation for the research and test reactors for FY 2014. The FY 2013 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XV—ANNUAL FEE SUMMARY CALCULATIONS FOR RESEARCH AND TEST REACTORS

[Dollars in millions]

Summary fee calculations	FY 2013 final	FY 2014 proposed
Total budgeted resources	\$1.50	\$2.63
Less estimated 10 CFR part 170 receipts	- 1.19	- 2.28
Net 10 CFR part 171 resources	0.30	0.35
Allocated generic transportation	0.03	0.03
Fee-relief adjustment	- 0.01	- 0.04
Billing adjustments	- 0.00	- 0.40
Total required annual fee recovery	0.33	0.34

For FY 2014, budgetary resources for research and test reactors increase due to more emphasis on rulemaking activities to streamline license renewal processes. The annual fee for research and test reactors mainly increases due to increased budgetary resources. The required annual fee recovery amount is divided equally among the four research and test reactors subject to annual fees and results in an FY 2014 annual fee of \$84,500 for each licensee.

f. Rare Earth Facilities

The agency does not anticipate receiving an application for a rare earth facility this fiscal year, so no budgeted resources are allocated to this fee class, and no annual fee would be published in FY 2014.

g. Materials Users

For FY 2014, budget costs of \$33.2 million for material users would be recovered through annual fees assessed

to 10 CFR parts 30, 40, and 70 licensees. Table XVI shows the calculation of the FY 2014 annual fee amount for materials users licensees. The FY 2013 values are shown for comparison. Note the following fee categories under § 171.16 are included in this fee class: 1.C., 1.D., 1.F., 2.B., 2.C. through 2.F., 3.A. through 3.S., 4.A. through 4.C., 5.A., 5.B., 6.A., 7.A. through 7.C., 8.A., 9.A. through 9.D., and 17. (Individual values may not sum to totals due to rounding.)

TABLE XVI—ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS

[Dollars in millions]

Summary fee calculations	FY 2013 final	FY 2014 proposed
Total budgeted resources	\$30.7	\$32.8
Less estimated 10 CFR part 170 receipts	- 1.2	- \$0.9
Net 10 CFR part 171 resources	29.5	31.9
Allocated generic transportation	1.5	1.3
Fee-relief adjustment/LLW surcharge	0.2	0.3

TABLE XVI—ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS—Continued
[Dollars in millions]

Summary fee calculations	FY 2013 final	FY 2014 proposed
Billing adjustments	- 0.0	- 0.3
Total required annual fee recovery	31.2	33.2

The total required annual fees to be recovered for materials licensees increase in FY 2014 mainly for oversight activities. To equitably and fairly allocate the \$33.2 million in FY 2014 budgeted costs to be recovered in annual fees assessed to the approximately 3,000 diverse materials users licensees, the NRC would continue to base the annual fees for each fee category within this class on the 10 CFR part 170 application fees and estimated inspection costs for each fee category. Because the application fees and inspection costs are indicative of the complexity of the license, this approach would continue to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on the NRC's cost to regulate each category. This fee calculation would also continue to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses.

The annual fee for these categories of materials users' licenses is developed as follows:

$$\text{Annual fee} = \text{Constant} \times [\text{Application Fee} + (\text{Average Inspection Cost} / \text{Inspection Priority})] + \text{Inspection Multiplier} \times (\text{Average Inspection Cost} / \text{Inspection Priority}) + \text{Unique Category Costs}.$$

The constant is the multiple necessary to recover approximately \$23.8 million in general costs (including allocated generic transportation costs) and is 1.59 for FY 2014. The average inspection cost is the average inspection hours for each fee category multiplied by the hourly rate of \$279. The inspection priority is the interval between routine inspections, expressed in years. The inspection multiplier is the multiple necessary to recover approximately \$8.8 million in inspection costs, and is 2.4 for FY 2014. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2014, approximately

\$238,500 in budgeted costs for the implementation of revised 10 CFR part 35, "Medical Use of Byproduct Material (unique costs)," has been allocated to holders of NRC human-use licenses.

The annual fee to be assessed to each licensee also includes a share of the fee-relief assessment of approximately \$34,000 allocated to the materials users fee class (see Section III.B.1, "Application of Fee-Relief and Low-Level Waste Surcharge," of this document), and for certain categories of these licensees, a share of the approximately \$319,000 surcharge costs allocated to the fee class. The annual fee for each fee category is shown in § 171.16(d).

h. Transportation

Table XVII shows the calculation of the FY 2014 generic transportation budgeted resources to be recovered through annual fees. The FY 2013 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XVII—ANNUAL FEE SUMMARY CALCULATIONS FOR TRANSPORTATION
[Dollars in millions]

Summary fee calculations	FY 2013 final	FY 2014 proposed
Total budgeted resources	\$8.2	\$8.0
Less estimated 10 CFR part 170 receipts	- 2.7	- 3.1
Net 10 CFR part 171 resources	5.5	4.9

The NRC must approve any package used for shipping nuclear material before shipment. If the package meets NRC requirements, the NRC issues a Radioactive Material Package Certificate of Compliance (CoC) to the organization requesting approval of a package. Organizations are authorized to ship radioactive material in a package approved for use under the general licensing provisions of 10 CFR part 71, "Packaging and Transportation of Radioactive Material." The resources associated with generic transportation activities are distributed to the license fee classes based on the number of CoCs benefitting (used by) that fee class, as a

proxy for the generic transportation resources expended for each fee class.

The total FY 2014 budgetary resources for generic transportation activities, including those to support DOE CoCs, is \$4.9 million. The decrease in 10 CFR part 171 resources in FY 2014 is primarily due to the winding down of 10 CFR parts 71 and 72 rulemaking activities and increased 10 CFR part 170 billing activities. Generic transportation resources associated with fee-exempt entities are not included in this total. These costs are included in the appropriate fee-relief category (e.g., the fee-relief category for nonprofit educational institutions).

Consistent with the policy established in the NRC's FY 2006 final fee rule (71 FR 30721; May 30, 2006), the NRC would recover generic transportation costs unrelated to DOE as part of existing annual fees for license fee classes. The NRC would continue to assess a separate annual fee under § 171.16, fee category 18.A., for DOE transportation activities. The amount of the allocated generic resources is calculated by multiplying the percentage of total CoCs used by each fee class (and DOE) by the total generic transportation resources to be recovered.

The distribution of these resources to the license fee classes and DOE is shown in Table XVIII. The distribution

is adjusted to account for the licensees in each fee class that are fee-exempt. For example, if four CoCs benefit the entire research and test reactor class, but only

4 of 31 research and test reactors are subject to annual fees, the number of CoCs used to determine the proportion of generic transportation resources

allocated to research and test reactor annual fees equals $(4/31) \times 4$, or 0.5 CoCs.

TABLE XVIII—DISTRIBUTION OF GENERIC TRANSPORTATION RESOURCES, FY 2014

[Dollars in millions]

License fee class/DOE	Number CoCs benefiting fee class or DOE	Percentage of total CoCs	Allocated generic transportation resources
Total	85.5	100.0	\$4.89
DOE	20.0	23.4	1.14
Operating Power Reactors	20.0	23.4	1.14
Spent Fuel Storage/Reactor Decommissioning	11.0	12.9	0.63
Research and Test Reactors	0.5	0.6	0.03
Fuel Facilities	11.0	12.9	0.63
Materials Users	23.0	26.9	1.32

The NRC assesses an annual fee to DOE based on the 10 CFR part 71 CoCs it holds and does not allocate these DOE-related resources to other licensees' annual fees, because these resources specifically support DOE. Note that DOE's annual fee includes a reduction for the fee-relief surplus adjustment (see Section III.B.1, Application of Fee-Relief and Low-Level Waste Surcharge, of this document), resulting in a total annual fee of \$1,084,000 for FY 2014. The annual fee decreases in FY 2014 are primarily due to the conclusion of 10 CFR parts 71 and 72 rulemaking activities and an increase in 10 CFR part 170 billings.

Administrative Changes

The NRC is proposing the following eight administrative changes:

(1) *Amend Definition for "Research Reactor" Under 10 CFR 170.3, "Definitions," To Correct Reference.* A final rule was published in the **Federal Register** on August 1, 1968 (33 FR 10924), that added 10 CFR part 170 to the *Code of Federal Regulations*. The definitions section was contained in § 170.3 and included the definitions for "research reactor" and "testing facility." However, the definitions section also originally included paragraph designations of (a), (b), (c), etc. The definition for "research reactor" was paragraph (h) and referenced paragraph (m), which was the definition for "testing facility." In a final rule published on May 23, 1990 (55 FR 21179), the paragraph designations were removed and the definitions placed in alphabetical order. However, the reference contained in the definition for "research reactor" was not corrected to refer to the definition for "testing facility" and not "paragraph (m)." Therefore, the NRC proposes to amend the definition for "research reactor" to remove the reference to paragraph (m),

which no longer exists. The proposed definition would correctly reference the definition for "testing facility."

(2) *Delete Language Under 10 CFR Part 170.12, "Payment of Fees," Which Is Not Applicable to the Current Fleet of Licensees Regarding Deferred Application Costs.* The NRC staff recently performed a query of the NRC's cost accounting system and determined current installment payment plans between the NRC and licensees have installment payment plan duration periods for up to 3 years in FY 2014, and current language regarding application costs deferred before August 9, 1991, is no longer applicable. Therefore, the NRC proposes to modify paragraph (b)(3) and delete paragraphs (b)(5), (b)(6) and (b)(7) of this section.

(3) *Amend Language Under 10 CFR 170.12, "Payment of Fees," To Address Underpayment of Fees.* The NRC proposes to modify 10 CFR 170.12 to include a provision to allow for the collection of any underpayment in fees resulting from an error by the NRC. This provision would provide clarity to licensees that the NRC must collect fees resulting from billing errors to satisfy the requirements of OBRA-90, as amended.

(4) *Modify Language Under 10 CFR 170.31, "Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections, and Import and Export Licenses," To Avoid Duplicate Billing.* As currently written, the regulations in this section could allow licensees in certain fee categories to be charged duplicate fees for identical activities in similar fee categories. Therefore, the NRC proposes to modify the descriptions for three fee categories in this section by adding footnotes for fee categories 2.B., 3.P., and 7.C. These footnotes would provide an exemption from other fee category codes with

identical activities associated with the license and avoid duplicate billing.

(5) *Modify Language Under 10 CFR 171.15, "Annual Fees: Reactor Licenses and Spent Fuel Storage Reactor Licenses," To Correct the Types of Non-Power Reactors.* The NRC proposes to modify the language under paragraphs (a) and (e) by replacing "and" with "or" to clarify that research reactors and test reactors are two types of non-power reactors.

(6) *Modify Language Under 10 CFR 171.16, "Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC," To Avoid Duplicate Billing.* As currently written, the regulations in this section could allow licensees in certain fee categories to be charged duplicate fees for identical activities in similar fee categories. Therefore, the NRC proposes to modify the descriptions for three fee categories in this section by adding footnotes for fee categories 2.B., 3.P., and 7.C. These footnotes would provide an exemption from other fee category codes that have identical activities associated with the license and avoid duplicate billing.

(7) *Amend Language Under 10 CFR 171.19, "Payment," To Address Underpayment of Fees.* The NRC proposes to modify 10 CFR 171.19 to include a provision to allow for the collection of any underpayment in fees resulting from an error by the NRC. This provision would provide clarity to licensees that the NRC must collect fees resulting from billing errors to satisfy the requirements of OBRA-90, as amended.

(8) *Add New Paragraph Regarding Filing Fee Exemptions Requests.* The current placement of the language identifying the time period to file an

exemption request under 10 CFR 171.11, "Exemptions," implies that only one exemption criterion is subject to the filing period, when all exemption criteria are subject to same filing period. Therefore, the NRC proposes to remove the language currently under paragraph (b) concerning the filing period for fee exemption requests and move it to a new paragraph (a) to emphasize the time period is required for all exemption requests filed by licensees with the NRC. Current paragraphs (a), (b), (c), and (d) would be redesignated as paragraphs (b), (c), (d), and (e), respectively.

FY 2014 Billing

The NRC plans to publish the final fee rule no later than June 2014. The FY 2014 final fee rule will be a major rule as defined by the Congressional Review Act of 1996 (5 U.S.C. 801–808). Therefore, the NRC's fee schedules for FY 2014 will become effective 60 days after publication of the final rule in the **Federal Register**. Upon publication of the final rule, the NRC will send an invoice for the amount of the annual fees to reactor licensees, 10 CFR part 72 licensees, major fuel cycle facilities, and other licensees with annual fees of \$100,000 or more. For these licensees, payment is due on the effective date of the FY 2014 final rule. Because these licensees are billed quarterly, the payment amount due is the total FY 2014 annual fee less payments made in the first three quarters of the fiscal year.

Materials licensees with annual fees of less than \$100,000 are billed annually. Those materials licensees whose license anniversary date during FY 2014 falls before the effective date of the FY 2014 final rule will be billed for the annual fee during the anniversary month of the license at the FY 2013 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 2014 final rule will be billed for the annual fee at the FY 2014 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

IV. Section-by-Section Analysis

The following paragraphs describe the specific changes proposed by this rulemaking.

10 CFR 170.3, Definitions

The NRC proposes to amend the definition of "research reactor" to correctly reference the definition of "testing facility."

10 CFR 170.12, Payments of Fees

The NRC proposes to modify paragraph (b)(3) and delete paragraphs (b)(5), (b)(6), and (b)(7) based on the latest accounting cost system information, which deems the current language referencing application costs deferred before August 9, 1991, as obsolete. The NRC also proposes to add a new paragraph (g) to clarify that the NRC is authorized to collect any underpayment of fees from licensees to satisfy the requirements of OBRA–90, as amended.

10 CFR 170.20, Average Cost per Professional Staff Hour

The NRC proposes to revise this section to reflect the proposed hourly rate for FY 2014.

10 CFR 170.21, Schedule of Fees for Production or Utilization Facilities, Review of Standard Referenced Design Approvals, Special Projects, Inspections, and Import and Export Licenses

The NRC proposes to revise fees for fee category code K. to reflect the FY 2014 proposed hourly rate for flat fee applications.

10 CFR 170.31, Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections, and Import and eExport Licenses

The NRC is proposing to revise the fee category description for 2.B. by adding footnotes 6, 7, and 8 to avoid duplicate billing and to provide exemptions of fees from fee category codes with identical requirements. The NRC is also proposing to revise the fee category descriptions for 3.P. and 7.C. by adding footnotes 9 and 10, respectively, for the same reasons.

10 CFR 171.11, Exemptions.

The NRC is proposing to redesignate paragraphs (a), (b), (c), and (d) as paragraphs (b), (c), (d), and (e), respectively, add a new paragraph (a), and revise newly redesignated paragraph (c) to clarify the time period for filing exemption requests applies to all exemption criteria instead of one exemption criterion.

10 CFR 171.15, Annual Fees: Reactor Licenses and Independent Fuel Storage Licenses

The NRC proposes to revise paragraph (a) to allow an ISFSI licensee to be charged an annual fee only when the licensee has the ability to use or to derive benefit from the license. The NRC proposes to further revise paragraph (a) by replacing "and" with "or" to clarify that research reactors and

test reactors are two separate types of non-power reactors. The NRC proposes to revise paragraph (b)(1) to reflect the required FY 2014 annual fee to be collected from each operating power reactor by September 30, 2014. The NRC proposes to revise the introductory text of paragraph (b)(2) to reflect FY 2014 in reference to annual fees and fee relief adjustment. The NRC proposes to revise paragraph (c)(1) and the introductory text of paragraph (c)(2) to reflect the FY 2014 spent fuel storage/reactor decommissioning and spent fuel storage annual fee for 10 CFR part 50 licensees and 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license, and the FY 2014 fee relief adjustment. The NRC proposes to revise the introductory text of paragraph (d)(1) and paragraphs (d)(2) and (d)(3) to reflect the FY 2014 fee-relief adjustment for the operating reactor power class of licenses, the number of operating power reactors, and the FY 2014 fee relief adjustment for spent fuel storage reactor decommissioning class of licenses. The NRC proposes to revise paragraph (e) to reflect the FY 2014 annual fees for research reactors and test reactors. The NRC proposes to further revise paragraph (e) by replacing "and" with "or" to clarify that research reactors and test reactors or two separate types of non-power reactors.

10 CFR 171.16, Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

The NRC is proposing to revise paragraphs (d) and (e) to reflect FY 2014 annual fees and the FY 2014 fee-relief adjustment. The NRC is proposing to revise fee category code description to 2.B. to add footnotes 16, 17, and 18 to avoid duplicate billing and to provide an exemption of fees from fee category codes with identical requirements. The NRC is also proposing to revise fee category code descriptions 3.P. and 7.C. to add footnotes 19 and 20, respectively, for the same reasons.

10 CFR 171.19, Payment of Fees

The NRC is proposing to add paragraph (f) to clarify that the NRC is authorized to collect any underpayment of fees from licensees to satisfy the requirements of OBRA–90, as amended.

V. Regulatory Flexibility Certification

Section 604 of the Regulatory Flexibility Act requires agencies to perform an analysis that considers the impact of a rulemaking on small

entities. The NRC prepared a FY 2013 biennial regulatory flexibility analysis in accordance with the FY 2001 final rule (66 FR 32467; June 14, 2001). This rule also stated the small entity fees will be reexamined every 2 years and in the same years the NRC conducts the biennial review of fees as required by the Office of Chief Financial Officer Act. For the FY 2013 final rule, small entity fees increased to \$2,800 for the maximum upper-tier small entity fee and increased to \$600 for the lower-tier small entity fee as a result of the biennial review, which factored in the number of increased hours for application reviews and inspections in the fee calculations. These fees remain unchanged for this proposed rule. The NRC's regulatory flexibility analysis for the FY 2013 final rule is available as indicated in Section XIII, Availability of Documents, of this document. The next small entity biennial review is scheduled for FY 2015.

VI. Regulatory Analysis

Under OBRA-90, as amended, and the AEA, the NRC is required to recover 90 percent of its budget authority, or total appropriations of \$1,055.9 million, in FY 2014. The NRC established fee methodology guidelines for 10 CFR part 170 in 1978, and more fee methodology guidelines through the establishment of 10 CFR part 171 in 1986. In subsequent rulemakings, the NRC has adjusted its fees without changing the underlying principles of its fee policy in order to ensure that the NRC continues to comply with the statutory requirements for cost recovery in OBRA-90 and the AEA.

In this rulemaking, the NRC continues this long-standing approach. Therefore, the NRC did not identify any alternatives to the current fee structure guidelines and did not prepare a regulatory analysis for this rulemaking.

VII. Backfitting and Issue Finality

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required. A backfit analysis is not required because these amendments do not require the modification of, or addition to, systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

VIII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to the clarity and effectiveness of the language used.

IX. National Environmental Policy Act

The NRC has determined that this proposed rule is the type of action described in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this proposed rule.

IX. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an

information collection requirement unless the requesting document displays a currently valid OMB control number.

XI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed fee rule, the NRC is proposing to amend the licensing, inspection, and annual fees charged to its licensees and applicants, as necessary, to recover approximately 90 percent of its budget authority in FY 2014, as required by OBRA-90, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

XII. Availability of Guidance

The Small Business Regulatory Enforcement Fairness Act requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. The NRC, in compliance with the law, prepared the "Small Entity Compliance Guide" for the FY 2013 final fee rule. This document, which has been relabeled for FY 2014, is available as indicated in Section XIII, Availability of Documents, of this document. The next compliance guide will be developed when the NRC completes the next small entity biennial review in FY 2015.

XIII. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No./Web Link/Federal Register Citation
FY 2014 Proposed Fee Rule Work Papers	ML14064A394.
FY 2013 Regulatory Flexibility Analysis	ML13067A088.
FY 2014 U.S. Nuclear Regulatory Commission Small Entity Compliance Guide.	ML14055A070.
NUREG-1100, Volume 29, "Congressional Budget Justification: Fiscal Year 2014" (April 2013).	http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1100/v29/ .
NRC Form 526, Certification of Small Entity Status for the Purposes of Annual Fees Imposed under 10 CFR Part 171.	http://www.nrc.gov/reading-rm/doc-collections/forms/nrc526.pdf .

Throughout the development of this rule, the NRC may post documents related to this rule, including public comments, on the Federal rulemaking Web site at <http://www.regulations.gov> under Docket ID NRC-2013-0276. The

Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder NRC-2013-0276; (2) click the "Sign up for Email Alerts" link; and (3)

enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS IMPORT AND EXPORT LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 1. The authority citation for part 170 continues to read as follows:

Authority: Independent Offices Appropriations Act sec. 501 (31 U.S.C. 9701); Atomic Energy Act sec. 161(w) (42 U.S.C. 2201(w)); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Chief Financial Officers Act sec. 205 (31 U.S.C. 901, 902); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act secs. 623, Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58, 119 Stat. 783 (42 U.S.C. 2201(w), 2014, 2021, 2021b, 2111).

■ 2. In § 170.3, revise the definition “research reactor” to read as follows:

§ 170.3 Definitions.

Research reactor means a nuclear reactor licensed by the Commission under the authority of subsection 104c of the Act and pursuant to the provisions of § 50.21(c) of this chapter for operation at a thermal power level of 10 megawatts or less, and which is not a *testing facility* as defined in this section.

■ 3. In § 170.12, revise paragraph (b)(3), remove paragraphs (b)(5) through (7), and add paragraph (g).

The revision and addition read as follows:

§ 170.12 Payment of fees.

(b) * * *

(3) The NRC intends to bill each applicant or licensee at quarterly intervals for all accumulated costs for each application the applicant or licensee has on file for NRC review, until the review is completed.

(g) *Collection of underpayment of fees.* The NRC is entitled to collect any underpayment of fees as a result of an error by the NRC.

■ 4. Revise § 170.20 to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, 10 CFR part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the professional staff-hour rate of \$279 per hour.

■ 5. In § 170.21, in the table, revise the fee category K to read as follows:

§ 170.21 Schedule of fees for production or utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees ^{1 2}
* * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production or utilization facilities or the export only of components for production or utilization facilities issued under 10 CFR part 110.	
1. Application for import or export of production or utilization facilities ⁴ (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b).	
Application—new license, or amendment; or license exemption request	\$18,200
2. Application for export of reactor and other components requiring Executive Branch review, for example, those actions under 10 CFR 110.41(a).	
Application—new license, or amendment; or license exemption request	9,800
3. Application for export of components requiring the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license, or amendment; or license exemption request	4,500
4. Application for export of facility components and equipment not requiring Commission or Executive Branch review, or obtaining foreign government assurances.	
Application—new license, or amendment; or license exemption request	3,400
5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and, therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities.	
Minor amendment to license	1,400

¹ Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the *Code of Federal Regulations* (e.g., 10 CFR 50.12, 10 CFR 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form.

² Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect when the service was provided.

⁴ Imports only of major components for end-use at NRC-licensed reactors are authorized under NRC general import license in 10 CFR 110.27.

■ 6. In § 170.31, revise the table to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

SCHEDULE OF MATERIALS FEES
[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
1. Special nuclear material:	
A. (1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]	Full Cost.
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210].	Full Cost.
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [Program Code(s): 21310, 21320]	Full Cost.
(b) Gas centrifuge enrichment demonstration facilities	Full Cost.
(c) Others, including hot cell facilities	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200].	Full Cost.
C. Licenses for possession and use of special nuclear material of less than a critical mass as defined in § 70.4 in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. ⁴	
Application [Program Code(s): 22140]	\$1,300.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass, as defined in § 70.4 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A. ⁴	
Application [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22170, 23100, 23300, 23310].	\$2,600.
E. Licenses or certificates for construction and operation of a uranium enrichment facility [Program Code(s): 21200]	Full Cost.
F. For special nuclear materials licenses in sealed or unsealed form of greater than a critical mass as defined in § 70.4 of this chapter. ⁴ [Program Code(s): 22155].	Full Cost.
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride or for deconverting uranium hexafluoride in the production of uranium oxides for disposal. [Program Code(s): 11400].	Full Cost.
(2) Licenses for possession and use of source material in recovery operations such as milling, <i>in-situ</i> recovery, heap-leaching, ore buying stations, ion-exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	Full Cost.
(b) Basic <i>In Situ</i> Recovery facilities [Program Code(s): 11500]	Full Cost.
(c) Expanded <i>In Situ</i> Recovery facilities [Program Code(s): 11510]	Full Cost.
(d) <i>In Situ</i> Recovery Resin facilities [Program Code(s): 11550]	Full Cost.
(e) Resin Toll Milling facilities [Program Code(s): 11555]	Full Cost.
(f) Other facilities [Program Code(s): 11700]	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000].	Full Cost.
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010].	Full Cost.
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820].	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding. ^{6,7,8}	
Application [Program Code(s): 11210]	\$1,230.
C. Licenses to distribute items containing source material to persons exempt from the licensing requirements of part 40 of this chapter.	
Application [Program Code(s): 11240]	\$6,900.
D. Licenses to distribute source material to persons generally licensed under part 40 of this chapter.	
Application [Program Codes(s): 11230, 11231]	\$2,000.
E. Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution.	
Application [Program Code(s): 11710]	\$2,800.
F. All other source material licenses.	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
Application [Program Code(s): 11200, 11220, 11221, 11300, 11800, 11810]	\$2,800.
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03211, 03212, 03213]	\$13,100.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03214, 03215, 22135, 22162]	\$3,900.
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application [Program Code(s): 02500, 02511, 02513]	\$4,900.
D. [Reserved]	N/A
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	
Application [Program Code(s): 03510, 03520]	\$3,200.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03511]	\$6,500.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03521]	\$62,400.
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03254, 03255, 03257]	\$5,100.
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03250, 03251, 03252, 03253, 03256]	\$11,500.
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03240, 03241, 03243]	\$2,000.
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03242, 03244]	\$1,100.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	\$5,500.
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 03620]	\$3,700.
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4.A., 4.B., and 4.C.	
Application [Program Code(s): 03219, 03225, 03226]	\$7,400.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations.	
Application [Program Code(s): 03310, 03320]	\$4,100.
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. ⁹	
Application [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03130, 03140, 03220, 03221, 03222, 03800, 03810, 22130].	\$2,000.
Q. Registration of a device(s) generally licensed under part 31 of this chapter.	
Registration	\$400.
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section. ⁵	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified.	
Application [Program Code(s): 02700]	\$2,600.
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4), or (5).	
Application [Program Code(s): 02710]	\$2,000.
S. Licenses for production of accelerator-produced radionuclides.	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
Application [Program Code(s): 03210]	\$13,200.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material. [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101].	
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	Full Cost.
Application [Program Code(s): 03234]	\$6,000.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03232]	\$5,000.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.	
Application [Program Code(s): 03110, 03111, 03112]	\$3,900.
B. Licenses for possession and use of byproduct material for field flooding tracer studies.	
Licensing [Program Code(s): 03113]	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.	
Application [Program Code(s): 03218]	\$22,300.
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices.	
Application [Program Code(s): 02300, 02310]	\$9,000.
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. ¹⁰	
Application [Program Code(s): 02110]	\$8,700.
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.	
Application [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	\$3,400.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.	
Application [Program Code(s): 03710]	\$2,600.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution.	
Application—each device	\$5,400.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices.	
Application—each device	\$9,100.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.	
Application—each source	\$5,300.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel.	
Application—each source	\$1,060.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	Full Cost.
2. Other Casks	Full Cost.
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators.	
Application	\$4,200.
Inspections	Full Cost.
2. Users.	
Application	\$4,200.
Inspections	Full Cost.
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices).	Full Cost.
11. Review of standardized spent fuel facilities.	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
12. Special projects:	
Including approvals, pre-application/licensing activities, and inspections.	
Application [Program Code: 25110]	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance	Full Cost.
B. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter, including MMLs. Application [Program Code(s): 3900, 11900, 21135, 21215, 21240, 21325, 22200].	Full Cost.
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, regardless of whether or not the sites have been previously licensed.	Full Cost.
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite (fee categories 15.A. through 15.E.).	
A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b).	
Application—new license, or amendment; or license exemption request	\$18,200.
B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes applications for the export and import of radioactive waste and requires NRC to consult with domestic host state authorities (i.e., Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc.).	
Application—new license, or amendment; or license exemption request	\$9,800.
C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license, or amendment; or license exemption request	\$4,500.
D. Application for export or import of nuclear material not requiring Commission or Executive Branch review, or obtaining foreign government assurances.	
Application—new license, or amendment; or license exemption request	\$3,400.
E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities.	
Minor amendment	\$1,400.
Licenses issued under part 110 of this chapter for the import and export only of Category 1 and Category 2 quantities of radioactive material listed in Appendix P to part 110 of this chapter (fee categories 15.F. through 15.R.).	
<i>Category 1 (Appendix P, 10 CFR Part 110) Exports:</i>	
F. Application for export of Appendix P Category 1 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)) and to obtain government-to-government consent for this process. For additional consent see 15.I.).	
Application—new license, or amendment; or license exemption request	\$15,400.
G. Application for export of Appendix P Category 1 materials requiring Executive Branch review and to obtain government-to-government consent for this process. For additional consents see 15.	
Application—new license, or amendment; or license exemption request	\$8,900.
H. Application for export of Appendix P Category 1 materials and to obtain one government-to-government consent for this process. For additional consents see 15.I.	
Application—new license, or amendment; or license exemption request	\$6,700.
I. Requests for each additional government-to-government consent in support of an export license application or active export license.	
Application—new license, or amendment; or license exemption request	\$280.
<i>Category 2 (Appendix P, 10 CFR Part 110) Exports:</i>	
J. Application for export of Appendix P Category 2 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)).	
Application—new license, or amendment; or license exemption request	\$15,400.
K. Applications for export of Appendix P Category 2 materials requiring Executive Branch review.	
Application—new license, or amendment; or license exemption request	\$8,900.
L. Application for the export of Category 2 materials.	
Application—new license, or amendment; or license exemption request	\$5,600.
M. [Reserved]	N/A.
N. [Reserved]	N/A.
O. [Reserved]	N/A.
P. [Reserved]	N/A.
Q. [Reserved]	N/A.
<i>Minor Amendments (Category 1 and 2, Appendix P, 10 CFR Part 110, Export):</i>	
R. Minor amendment of any active export license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign authorities.	
Minor amendment	\$1,400.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
Application	\$1,900.
17. Master materials licenses of broad scope issued to Government agencies. Application [Program Code(s): 03614]	Full Cost.
18. Department of Energy.	
A. Certificates of Compliance. Evaluation of casks, 11 packages, and shipping containers (including spent fuel, high-level waste, and other casks, and plutonium air packages).	Full Cost.
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	Full Cost.

¹ *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews; applications for new licenses, approvals, or license terminations; possession-only licenses; issuances of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses, except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee category 1.C. only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses, renewals, and amendments to existing licenses, pre-application consultations and other documents submitted to the NRC for review, and project manager time for fee categories subject to full cost fees are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to an export or import license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment, unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

² Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the *Code of Federal Regulations* (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in fee categories 9.A. through 9.D.

³ Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect when the service is provided, and the appropriate contractual support services expended.

⁴ Licensees paying fees under categories 1.A., 1.B., and 1.E. are not subject to fees under categories 1.C., 1.D. and 1.F. for sealed sources authorized in the same license, except for an application that deals only with the sealed sources authorized by the license.

⁵ Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

⁶ Licensees paying fees under 3.O. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

⁷ Licensees paying fees under 3.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

⁸ Licensees paying fees under 7.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

⁹ Licensees paying fees under 3.N. are not subject to paying fees under 3.P. for calibration or leak testing services authorized on the same license.

¹⁰ Licensees paying fees under 7.B. are not subject to paying fees under 7.C. for broad scope license licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices authorized on the same license.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 7. The authority citation for part 171 continues to read as follows:

Authority: Consolidated Omnibus Budget Reconciliation Act sec. 7601, Pub. L. 99–272, as amended by sec. 5601, Pub. L. 100–203, as amended by sec. 3201, Pub. L. 101–239, as amended by sec. 6101, Pub. L. 101–508, as amended by sec. 2903a, Pub. L. 102–486 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109–103 (42 U.S.C. 2214);

Atomic Energy Act sec. 161(w), 223, 234 (42 U.S.C. 2201(w), 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 8. In § 171.11, redesignate paragraphs (a) through (d) as paragraphs (b) through (e), respectively, add a new paragraph (a), and revise newly redesignated paragraph (c) to read as follows:

§ 171.11 Exemptions.

(a) All requests for exemptions must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which the exemption is sought in order to be considered. Absent extraordinary

circumstances, any exemption requests filed beyond that date will not be considered. The filing of an exemption request does not extend the date on which the bill is payable. Only timely payment in full ensures avoidance of interest and penalty charges. If a partial or full exemption is granted, any overpayment will be refunded. Requests for clarification of or questions relating to an annual fee bill must also be filed within 90 days from the date of the initial invoice to be considered.

* * * * *

(c) The Commission may, upon application by an interested person or on its own initiative, grant an exemption from the requirements of this

part that it determines is authorized by law or otherwise in the public interest.

* * * * *

■ 9. In § 171.15, revise paragraphs (a) and (b)(1), paragraph (b)(2) introductory text, paragraph (c)(1), paragraphs (c)(2) introductory text and (d)(1) introductory text, and paragraphs (d)(2), (d)(3), and (e) to read as follows:

§ 171.15 Annual fees: Reactor licenses and independent spent fuel storage licenses.

(a) Each person holding an operating license for a power, test, or research reactor; each person holding a combined license under part 52 of this chapter after the Commission has made the finding under 10 CFR 52.103(g); each person holding a part 50 or part 52 power reactor license that is in decommissioning or possession only status, except those that have no spent fuel onsite; and each person holding a part 72 license who does not hold a part 50 or part 52 license and provides notification in accordance with 10 CFR 72.80(g), shall pay the annual fee for each license held during the Federal fiscal year in which the fee is due. This paragraph does not apply to test or research reactors exempted under § 171.11(a).

(b)(1) The FY 2014 annual fee for each operating power reactor which must be collected by September 30, 2014, is \$5,328,000.

(2) The FY 2014 annual fees are comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (fee-relief adjustment). The activities comprising the spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2014 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2014 base annual fee for operating power reactors are as follows:

* * * * *

(c)(1) The FY 2014 annual fee for each power reactor holding a 10 CFR part 50

license that is in a decommissioning or possession-only status and has spent fuel onsite, and for each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is \$224,000.

(2) The FY 2014 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section) and a fee-relief adjustment. The activities comprising the FY 2014 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2014 spent fuel storage/reactor decommissioning rebaselined annual fee are:

* * * * *

(d)(1) The fee-relief adjustment allocated to annual fees includes a surcharge for the activities listed in paragraph (d)(1)(i) of this section, plus the amount remaining after total budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section are reduced by the appropriations the NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section for a given FY, annual fees will be reduced. The activities comprising the FY 2014 fee-relief adjustment are as follows:

* * * * *

(2) The total FY 2014 fee-relief adjustment allocated to the operating power reactor class of licenses is a \$621,500 fee-relief surplus, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2014 operating power reactor fee-relief adjustment to be assessed to each operating power reactor is approximately a \$6,094 fee relief surplus. This amount is calculated by dividing the total operating power reactor fee-relief surplus adjustment, \$621,500 by the number of operating power reactors (100).

(3) The FY 2014 fee-relief adjustment allocated to the spent fuel storage/reactor decommissioning class of licenses is a – \$44,500 fee-relief assessment. The FY 2014 spent fuel storage/reactor decommissioning fee-relief adjustment to be assessed to each operating power reactor, each power reactor in decommissioning or possession-only status that has spent fuel onsite, and to each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is a – \$361 fee-relief assessment. This amount is calculated by dividing the total fee-relief adjustment costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel onsite, and 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license.

(e) The FY 2014 annual fees for licensees authorized to operate a research or test (nonpower) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor	\$84,500
Test reactor	84,500

■ 10. In § 171.16, revise paragraphs (d) and (e) introductory text to read as follows:

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.

* * * * *

(d) The FY 2014 annual fees are comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the FY 2014 fee-relief adjustment are shown for convenience in paragraph (e) of this section. The FY 2014 annual fees for materials licensees and holders of certificates, registrations, or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees ^{1 2 3}
1. Special nuclear material:	
A. (1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]	\$6,329,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]	2,178,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees ^{1 2 3}
(a) Facilities with limited operations [Program Code(s): 21310, 21320]	⁵ N/A
(b) Gas centrifuge enrichment demonstration facilities	1,225,000
(c) Others, including hot cell facilities	613,000
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200]	¹¹ N/A
C. Licenses for possession and use of special nuclear material of less than a critical mass, as defined in § 70.4 of this chapter, in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. ¹⁵ [Program Code(s): 22140]	3,800
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass, as defined in § 70.4 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A. ¹⁵ [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22170, 23100, 23300, 23310]	7,400
E. Licenses or certificates for the operation of a uranium enrichment facility [Program Code(s): 21200]	3,403,000
F. For special nuclear materials licenses in sealed or unsealed form of greater than a critical mass as defined in § 70.4 of this chapter. ¹⁵ [Program Code: 22155]	7,500
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride or for deconverting uranium hexafluoride in the production of uranium oxides for disposal. [Program Code: 11400]	1,293,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion-exchange facilities and in-processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	33,900
(b) Basic <i>In Situ</i> Recovery facilities [Program Code(s): 11500]	42,900
(c) Expanded <i>In Situ</i> Recovery facilities [Program Code(s): 11510]	48,600
(d) <i>In Situ</i> Recovery Resin facilities [Program Code(s): 11550]	0
(e) Resin Toll Milling facilities [Program Code(s): 11555]	⁵ N/A
(f) Other facilities ⁴ [Program Code(s): 11700]	⁵ N/A
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000]	⁵ N/A
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010]	19,200
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820]	5,700
B. Licenses that authorize possession, use, and/or installation of source material for shielding. ^{16 17 18} [Program Code: 11210]	3,300
C. Licenses to distribute items containing source material to persons exempt from the licensing requirements of part 40 of this chapter. [Program Code: 11240]	12,500
D. Licenses to distribute source material to persons generally licensed under part 40 of this chapter [Program Code(s): 11230 and 11231]	5,100
E. Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution. [Program Code: 11710]	7,800
F. All other source material licenses. [Program Code(s): 11200, 11220, 11221, 11300, 11800, 11810]	8,600
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03211, 03212, 03213]	55,100
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03214, 03215, 22135, 22162]	13,800
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). [Program Code(s): 02500, 02511, 02513]	20,200
D. [Reserved]	⁵ N/A
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units) [Program Code(s): 03510, 03520]	9,500
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03511]	13,900
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03521]	127,900

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees ^{1 2 3}
H. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03254, 03255]	10,700
I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03250, 03251, 03252, 03253, 03256]	20,800
J. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03240, 03241, 03243]	5,100
K. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03242, 03244]	4,100
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	17,500
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 03620]	10,000
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee categories 4.A., 4.B., and 4.C. [Program Code(s): 03219, 03225, 03226]	18,000
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license [Program Code(s): 03310, 03320]	29,800
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. ¹⁹ [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03140, 03130, 03220, 03221, 03222, 03800, 03810, 22130]	6,800
Q. Registration of devices generally licensed under part 31 of this chapter	¹³ N/A
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section: ¹⁴	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified [Program Code(s): 02700]	9,600
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4) or (5) [Program Code(s): 02710]	9,200
S. Licenses for production of accelerator-produced radionuclides [Program Code(s): 03210]	33,000
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101]	⁵ N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03234]	21,100
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03232]	16,700
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies [Program Code(s): 03110, 03111, 03112]	13,600
B. Licenses for possession and use of byproduct material for field flooding tracer studies. [Program Code(s): 03113]	⁵ N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material [Program Code(s): 03218]	44,400
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. [Program Code(s): 02300, 02310]	23,800
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. ⁹ [Program Code(s): 02110]	35,700

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees ^{1 2 3}
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. ^{9 20} [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	9,900
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities [Program Code(s): 03710]	9,600
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	8,600
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	14,500
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	8,400
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	1,700
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	6 N/A
2. Other Casks	6 N/A
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators	6 N/A
2. Users	6 N/A
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices)	6 N/A
11. Standardized spent fuel facilities	6 N/A
12. Special Projects [Program Code(s): 25110]	6 N/A
13. A. Spent fuel storage cask Certificate of Compliance	6 N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	12 N/A
14. Decommissioning/Reclamation:	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter, including master materials licenses (MMLs) [Program Code(s): 3900, 11900, 21135, 21215, 21240, 21325, 22200]	7 N/A
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, whether or not the sites have been previously licensed	7 N/A
15. Import and Export licenses	8 N/A
16. Reciprocity	8 N/A
17. Master materials licenses of broad scope issued to Government agencies [Program Code(s): 03614]	384,000
18. Department of Energy:	
A. Certificates of Compliance	¹⁰ 1,084,000
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	815,000

¹ Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current FY. The annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2012, and permanently ceased licensed activities entirely before this date. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession-only license during the FY and for new licenses issued during the FY will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license.

² Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

³ Each FY, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

⁴ Other facilities include licenses for extraction of metals, heavy metals, and rare earths.

⁵ There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

⁶ Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance and related Quality Assurance program approvals, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

⁷ Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

⁸ No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

⁹ Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses under fee categories 7.B. or 7.C.

¹⁰ This includes Certificates of Compliance issued to the U.S. Department of Energy that are not funded from the Nuclear Waste Fund.

¹¹ See § 171.15(c).

¹² See § 171.15(c).

¹³ No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.

¹⁴ Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

¹⁵ Licensees paying annual fees under category 1.A., 1.B., and 1.E. are not subject to the annual fees for categories 1.C., 1.D., and 1.F. for sealed sources authorized in the license.

¹⁶ Licensees paying fees under 3.O. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

¹⁷ Licensees paying fees under 3.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

¹⁸ Licensees paying fees under 7.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

¹⁹ Licensees paying fees under 3.N. are not subject to paying fees under 3.P. for calibration or leak testing services authorized on the same license.

²⁰ Licensees paying fees under 7.B. are not subject to paying fees under 7.C. for broad scope license licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices authorized on the same license.

(e) The fee-relief adjustment allocated to annual fees includes the budgeted resources for the activities listed in paragraph (e)(1) of this section, plus the total budgeted resources for the activities included in paragraphs (e)(2) and (3) of this section, as reduced by the appropriations the NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in

paragraphs (e)(2) and (3) of this section for a given FY, a negative fee-relief adjustment (or annual fee reduction) will be allocated to annual fees. The activities comprising the FY 2014 fee-relief adjustment are as follows:

* * * * *

■ 11. In § 171.19, add paragraph (f) to read as follows:

§ 171.19 Payment.

* * * * *

(f) The NRC is entitled to collect any underpayment of fees as a result of an error by the NRC.

Dated at Rockville, Maryland, this 31st day of March 2014.

For the Nuclear Regulatory Commission.

J.E. Dyer,
Chief Financial Officer.

[FR Doc. 2014-08221 Filed 4-11-14; 8:45 am]

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Part V

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 1351

Runaway and Homeless Youth; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1351

RIN 0970-AC43

Runaway and Homeless Youth

AGENCY: Family and Youth Services Bureau (FYSB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking would establish program performance standards for Runaway and Homeless Youth grantees providing services to eligible youth and their families. It also proposes revisions to reflect statutory changes, and to update procedures for soliciting and awarding grants. The proposed performance standards would be newly specified in regulation, but would build on standards already used by the program as priorities in funding opportunity solicitations and awards, in technical assistance, and in reporting requirements.

DATES: In order to be considered, comments on this proposed rule must be received on or before June 13, 2014.

ADDRESSES: Interested persons are invited to submit comments on this proposed rule either (1) electronically via the Internet at <http://www.regulations.gov> or (2) by mail to the Associate Commissioner, Family and Youth Services Bureau, Administration for Children and Families, 1250 Maryland Ave. SW., Washington, DC 20024. If you submit a comment, please include your name and address, identify the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material to the government-wide e-rulemaking site above, or to the address above, but please submit your comments by only one means.

FOR FURTHER INFORMATION CONTACT: Resa F. Matthew, Director, Division of Adolescent Development and Support, Family and Youth Services Bureau, 1-800-865-0965, ncfy@acf.hhs.gov. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8:30 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This proposed regulation is published under the authority granted to the Secretary of Health and Human Services by the Runaway and Homeless Youth Act (Title III of the Juvenile Justice and Delinquency Prevention Act of 1974), 42 U.S.C. 5701 *et seq.* as amended by the Reconnecting Homeless Youth Act of 2008 (Pub. L. 110-378).

II. Comment Procedures and Organization of NPRM

Pursuant to the Administrative Procedures Act, the Department allows a period of time for members of the public to comment on proposed rules. In this case, we will allow 60 days for comments. In making any modifications to this notice of proposed rulemaking, we are not required to consider comments received beyond the 60-day comment period. To make sure your comments are addressed fully, we suggest the following:

- Be specific;
- Address only issues raised by the proposed rule, not the provisions of the law itself;
- Explain reasons for any objections or recommended changes;
- Propose appropriate alternatives; and
- Reference the specific section of the notice of the proposed rulemaking being addressed.

The preamble to this proposed rule is organized as follows:

- Background of the proposals.
- Consultative processes used prior to developing the proposed standards.
- Scope of the rule.
- Section-by-section analysis and explanation of the proposed requirements.

The section-by-section analysis is organized to follow the framework of 45 CFR part 1351. It proposes revisions to:

- Significant terms used in the program;
- Stated purposes of the program;
- Eligibility for grants;
- Priorities for awards;
- Matching requirements;
- Project periods;
- Allowable and non-allowable costs;
- Application procedures;
- Funding criteria;
- Other Federal requirements; and
- Additional requirements that apply to all runaway and homeless youth program services grants.

A new section follows proposing program-specific standards, both performance standards and other standards, for each of the three major grant programs authorized under the Runaway and Homeless Youth Act.

III. Background

The Runaway and Homeless Youth Act ("the Act") authorizes three major grant programs administered by the Family and Youth Services Bureau (FYSB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), in the Department of Health and Human Services (HHS). These programs support local efforts to assist youth who have run away or are homeless. The Act also authorizes additional activities conducted through grants, including grants for research, evaluation, and service projects; grants for a national communications system to assist runaway and homeless youth in communicating with their families and service providers; and grants for technical assistance and training. The proposed rule covers all of these activities.

The Basic Center Grant Program (hereafter referred to as the Basic Center Program) funds grants to community-based public and private agencies for the provision of outreach, crisis intervention, temporary shelter, counseling, family unification, and aftercare services to runaway and homeless youth and their families. Basic Center projects generally serve youth under 18 years of age and can provide up to 21 days of shelter.

The Transitional Living Grant Program (hereafter referred to as the Transitional Living Program) provides grants to public and private organizations for community-based shelter including group homes, host family homes, and supervised apartments for youth, ages 16 to under 22, who cannot safely live with their own families. Transitional Living projects provide a long-term, safe, stable, and nurturing environment for up to 21 months. Young people who have not yet reached their 18th birthday at the end of the 21-month period may continue to receive services until they turn 18. Services include counseling in basic life skills, interpersonal skill building, educational advancement, job attainment skills, and physical and mental health care. These services are designed to help youth who are homeless develop the skills necessary to make a successful transition to self-sufficient living. The Transitional Living Program also funds Maternity Group Homes, which are specifically designed to meet the needs of pregnant and parenting youth.

The Education and Prevention Services to Reduce Sexual Abuse of Runaway, Homeless and Street Youth Program (hereafter referred to as the

Street Outreach Program) provides grants to public and private organizations for street-based outreach and education, including treatment, counseling, provision of information, and referrals for runaway, homeless, and street youth 21 years and younger who have been subjected to or are at risk of being subjected to sexual abuse or exploitation.

The Reconnecting Homeless Youth Act of 2008 (hereafter referred to as “the 2008 Act”) (Pub. L. 110–378) reauthorized the Runaway and Homeless Youth Act through FY 2013, and made a number of changes to the Act, including a requirement for the establishment of rules that specify performance standards for public and nonprofit private entities and agencies that receive grants authorized under sections 311, 321, and 351 of the Runaway and Homeless Youth Act.

We have already implemented elements of these statutory mandates through funding opportunity announcements, technical assistance and training, and data collection. This proposed rule would allow us to complete implementation of these legislative requirements. In addition, it would bring our codified regulations, last updated August 17, 2000 (65 FR 50139), into conformity with existing statutory provisions, the administrative and managerial procedures we already use in accordance with the 2008 Act, and previous statutory changes. We intend to provide technical assistance to grantees that focuses on effective implementation of these performance standards, and to implement them as new budget periods begin, after promulgation of a final rule, rather than in the middle of an existing budget period.

IV. Consultation and the Development of the NPRM

In keeping with the requirements of the statute, the Family and Youth Services Bureau (FYSB) sought input from grantees and other stakeholders prior to the development of this proposed rule. In April 2009, FYSB conducted a consultation forum that brought together forty-four individuals including subject experts, technical assistance providers, Runaway and Homeless Youth grantees, Federal staff, persons with extensive program monitoring experience, and national, regional and statewide youth servicing organization representatives.

Consultation participants represented the vast diversity of Runaway and Homeless Youth grantees from each geographic region and program size. Consultation participants also had

expertise and extensive knowledge of the three FYSB Runaway and Homeless Youth programs. The three-day forum provided an opportunity for exchanges of views and ideas from a wide array of perspectives.

FYSB also has obtained stakeholder perspectives and other information to inform this proposed rule in a number of additional ways. Since 2008, we have conducted national conferences bringing together all stakeholder groups and allowing for broad, informal exchanges of views. One such conference, the 2008 Runaway and Homeless Youth Grantee Conference, was attended by 442 participants, including representatives from 252 grantee organizations, to share ideas, promising approaches, and best practices. Participants met in over 30 different workshops addressing both universal issues and specific programmatic needs of the three major Runaway and Homeless Youth programs. Through the Runaway and Homeless Youth Training and Technical Assistance Centers, we have conducted an extensive training, technical assistance, and monitoring effort aimed not only at assisting grantees, but also at obtaining their feedback on operational issues. In tandem with these efforts, we conducted an in-depth review of existing regulatory and sub-regulatory issuances and developed a comprehensive set of on-site review materials, in use since February 2009.

These consultative processes provided valuable input that we have used in formulating the proposed performance and procedural standards. Importantly, the input we received emphasized that:

- The standards should promote an integrated, holistic approach to service delivery.
- The standards should be responsive to the complex social identities (i.e. race, ethnicity, nationality, religion/spirituality, gender identity/expression, sexual orientation, socioeconomic status, physical ability, language, beliefs, values, behavior patterns, or customs) of clients.
- The standards should serve as models for program quality and encourage programs to strive for excellence.
- The standards should achieve a balance between clarity and precision of regulatory intent and regulatory flexibility so that programs can be most responsive to local needs, settings, and circumstances.

• The standards should place emphasis on family-focused aspects of the program by strengthening links with local community providers, and helping

families identify and address individualized goals.

- Standards of any kind—whether performance or procedural—should facilitate rather than impede local flexibility in creating and operating effective programs that respond to local needs and priorities.

- Standards should not unnecessarily impose burdensome requirements that would divert local resources away from service.

We agree that “Regular measurement of progress toward specified outcomes is a vital component of any effort at managing-for-results” (Harry P. Hatry, *Performance Measurement*, Urban Institute Press, 2006). That said, we recognize that effective, workable, and successful performance standards are extremely difficult to formulate. Among the difficulties involved, some of the most important goals may be qualitative rather than quantitative. Near-term results may not correctly signal long-term effects. Measurement and appraisal may reduce the resources available for services. Not only may local circumstances vary, but also achieving a lower absolute result in some settings may actually reflect superior performance over other settings because difficulties were greater. There are challenges in establishing performance measures. However, they hold promise with regard to driving performance and assuring accountability. Despite these difficulties, in recent years some Federal programs, including the Runaway and Homeless Youth Program, have increasingly incorporated performance measures and standards into their ongoing operations because they can drive program improvement and help assure accountability. The standards and measures proposed in this rule represent what we believe are appropriate and realistic, consistent with the underlying complexity of the problems and processes involved in serving homeless and runaway youth. We welcome comments on whether our proposed standards strike the proper balance in meeting the objectives stated above, including measuring the most important program goals that are feasible to measure, preserving flexibility to grantees, and minimizing unnecessary burden. We welcome suggestions, particularly those supported by research or evaluative evidence, for improvements in the proposed standards.

We also seek in this proposed rule to update program requirements that are important to successful implementation of the program. For example, as discussed in the section-by-section analysis, we propose to continue the

requirement that grantees coordinate their activities with the 24-hour National Toll-free Communication System and that grantees submit statistical reports. We propose to include in the text of the regulation a number of statutory requirements that are currently used in program administration. For example, we propose to continue the implementation of a statutory requirement that Basic Center grantees shall have an intake procedure that is available 24 hours a day, 7 days a week, to all youth seeking services and shelter and that addresses and responds to immediate needs for crisis counseling, food, clothing, shelter, and health care services. Additionally, we want to underscore the importance of grantees coordinating with and working with other providers of services to homeless individuals, and strongly encourage grantees to collaborate with their local Continuum of Care, with the goal of ending youth homelessness.

In developing this proposed rule, we considered a large number of potential process and procedural requirements, some of which were generated by our public consultative process. We propose to codify a targeted number of these in order to minimize burden on grantees and to provide grantees flexibility in meeting their performance standards and in dealing with unique circumstances in their communities. Moreover, we believe that there are many effective practices that are best handled through technical assistance and training rather than established as regulatory standards.

V. Scope of the Proposed Rule

This rule proposes Runaway and Homeless Youth Program Performance Standards to help assess the quality and effectiveness of the Runaway and Homeless Youth Program nationally by providing indicators of successful outcomes for youth. The performance standards will be used to monitor individual project performance in achieving the purposes of the Act. Projects will also be subject to other requirements including other applicable regulations (e.g., civil rights regulations), and those cited in funding opportunity announcements.

This proposed rule also makes largely technical changes to existing program rules to conform to current law and to correct outdated provisions. Equally important, it proposes to revise our regulatory provisions on making awards to reflect the performance standards and to reflect onsite review and monitoring procedures that have been in place for a number of years.

All grantees will be expected to comply with newly imposed standards when final rules are issued and become effective. We propose, however, to delay applicability of the new performance standards until the beginning of the next budget period (typically October 1) after the effective date of the final rule. This will allow existing grantees time to come into compliance with the new standards, provide time for us to assist grantees, and avoid any confusion that may result from changing standards in the middle of budget periods as well as provide new grantees advance notice of expectations. To assist grantees, we will provide them with guidance on best practices for implementing the standards. We also plan to conduct additional technical assistance to help grantee agencies understand and implement the new standards. We intend for the proposed rule to complement our existing efforts to strengthen Runaway and Homeless Youth monitoring and to improve the overall program.

VI. Section-by-Section Discussion of the Regulatory Provisions

Subpart A. Definition of Terms

We propose to update the definitions of significant terms in § 1351.1 to reflect current statutory terminology and operating practice. We propose to revise a number of existing definitions, to add a number of definitions, to delete a few definitions that we do not believe are useful or necessary, and to change the format of the definitions. We request comment on each new or revised definition. For the most part, the additions and revisions are intended to reflect both recent changes to the statute and important practices in the administration of the program. The definitions section applies to all grants under the Act. Each individual definition only applies as it is applicable to each type of grant. The consultative process assisted in our proposed revisions because, as noted by many participants, the current regulations do not focus on some of the most important purposes and services of the programs operated under the statute. We add or clarify definitions to help achieve this goal.

We propose to add a definition of Act to read: Act means the Runaway and Homeless Youth Act as amended.

We propose to revise the definition of Aftercare to read: Aftercare means additional services provided beyond the period of residential stay that offer continuity and supportive follow-up to youth served by the program. This would simplify the current definition

for clarity but operationally constitutes no change.

We propose to delete the term “area” because a precise definition is not required for the purposes of the program.

As discussed later in the preamble, we propose to add a requirement for background checks of project staff and volunteers who come into contact with children and youth served or proposed to be served by the agency, and thus propose to add a definition to read: Background check means the review of an individual employee’s or employment applicant’s personal information, which shall include verification of educational credentials and employment experience, as well as a national examination of the individual’s criminal records, and an examination of the individual’s driving records, licensing records, and child abuse or neglect history. Volunteers who come into contact with children and youth served or proposed to be served by the agency must also undergo a background check. The purpose of such a background check is to protect both the grantee and the clients from potential harm from an employee or volunteer whose history presents a serious risk.

Because a budget period is an essential element of project funding, we propose to add a definition to read: Budget period means the interval of time into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes.

Case management is a central concept in serving client youth, and we propose to add a definition to read: Case management means assessing the needs of the client and, as appropriate, arranging, coordinating, monitoring, evaluating, and advocating for a package of services to meet the specific needs of the client.

Similarly, we propose to define the term client to read: Client means a runaway, homeless, or street youth, or youth at risk of running away or becoming homeless, who is served by a program grantee. This definition covers the full range of youth served under the program as it operates today.

We propose to delete the definition of “Coordinated networks of agencies” because the term is self-explanatory and is not used in any substantive provision of the regulations.

We propose to add definitions for congregate care, drop-in center, host family home, and supervised apartments to distinguish among different types of center models. These definitions distinguish centers that provide or use referrals for the full range

of services provided in the Basic Center Program, Transitional Living Program, and/or Street Outreach Program as appropriate from alternative models that provide more limited services. We propose congregate care to read: Congregate care means a shelter type that combines living quarters and restroom facilities with centralized dining services, shared living spaces, and access to social and recreational activities. We propose drop-in center to read: Drop-in center means a place operated and staffed for runaway or homeless youth that clients can visit without an appointment to get advice or information, to receive services or service referrals, or to meet other runaway or homeless youth. We propose host family home to read: Host family home means a family or single adult home that provides shelter to a homeless youth. And we propose supervised apartments to read: Supervised apartments means a type of shelter setting using building(s) with separate residential units where client supervision is provided on site or on call 24 hours a day. Supervised apartments can be scattered throughout the community, but they must be supervised.

Core competencies are essential in providing services that lead to improved outcomes for clients. We propose to add a definition for core competencies of youth worker to read: Core competencies of youth worker means the ability to demonstrate skills in all of six domain areas: (1) Professionalism (including, but not limited to, consistent and reliable job performance, awareness and use of professional ethics to guide practice), (2) applied positive youth development approach (including, but not limited to, skills to develop a positive youth development plan and identifying the client's strengths in order to best apply a positive youth development framework), (3) cultural and human diversity (including, but not limited to, gaining knowledge and skills to meet the needs of clients of a different race, ethnicity, nationality, religion/spirituality, gender identity/expression, sexual orientation), (4) applied human development (including, but not limited to, understanding the needs of those at risk and with special needs), (5) relationship and communication (including, but not limited to, working with clients in a collaborative manner), and (6) developmental practice methods (including, but not limited to, utilizing methods focused on genuine relationships, health and safety, intervention planning).

We propose to revise the definition of counseling services to include runaway prevention and intervention related services as follows: Counseling services means the provision of guidance, support, referrals for services including, but not limited to, health services, and advice to runaway or otherwise homeless youth and their families, as well as to youth and families when a young person is at risk of running away. These services are designed to alleviate the problems that have put the youth at risk of running away or contributed to his or her running away or being homeless.

We propose to delete the definition of "Demonstrably frequented by or reachable". The definition is unnecessary.

Drug abuse intervention and prevention services are important, and are defined under that term in the Act (section 387(1)). We propose to broaden the substance of the statutory definition in regulatory text to read: Drug abuse intervention and prevention services means services to prevent or reduce drug and/or alcohol abuse by runaway and homeless youth, and may include (i) individual, family, group, and peer counseling; (ii) drop-in services; (iii) assistance to runaway and homeless youth in rural areas (including the development of community support groups); (iv) information and training relating to drug and/or alcohol abuse by runaway and homeless youth to individuals involved in providing services to such youth; and (v) activities to improve the availability of local drug and/or alcohol abuse prevention services to runaway and homeless youth. Our reason for the broadening of this definition is two-fold: (1) We note that the RHY statute explicitly contemplates services to address alcohol abuse in section 387(5); (2) the inclusion of alcohol abuse in addition to drug abuse is standard practice in the substance abuse field as is demonstrated in the definition used by the Substance Abuse and Mental Health Services Administration that "substance abuse means the abuse of alcohol or other drugs."

We add a proposed definition of health care services to read: Health care services include physical, mental, behavioral, and dental health services and, in the case of Maternity Group Homes, are provided to the child of the youth and are included in the proposed performance standards. Additionally, the statute requires that in the case of home-based services under Part A, a youth's family (including unrelated individuals in the family households) shall receive counseling and

information related to mental and physical health care services. Therefore, the proposed definition also includes, where applicable and allowable within a program, family or household members of the youth shall receive information on appropriate health related services.

We propose to follow the substance of the statutory definition (section 387(2)) of home-based services to read as follows: Home-based services means services provided to youth and their families for the purpose of (i) preventing such youth from running away or otherwise becoming separated from their families and (ii) assisting runaway youth to return to their families. It includes services that are provided in the residences of families (to the extent practicable), including intensive individual and family counseling and training relating to life skills and parenting.

Homeless youth is an essential definition because it identifies individuals eligible to be served under the Act. The current regulatory definition is obsolete and we propose to replace it to read as follows, paraphrasing the Act (section 387(3)): Homeless youth means an individual who cannot live safely with a parent, guardian or relative, and who has no other safe alternative living arrangement. For purposes of Basic Center Program eligibility, a homeless youth must be less than 18 years of age (or higher if allowed by a State or local law or regulation that applies to licensure requirements for child- or youth-serving facilities). For purposes of Transitional Living Program eligibility, a homeless youth cannot be less than 16 years of age and must be less than 22 years of age (unless the individual commenced his or her stay before age 22, and the maximum service period has not ended).

Intake services are essential functions under the Act. We propose to define intake to read: Intake means a process for gathering information to assess eligibility and the services required to meet the immediate needs of the client.

Extremely important in this program are interfaces between Runaway and Homeless Youth projects and juvenile justice facilities, including any location a youth is placed by order of the court for a set period of time. We propose to expand the existing definition of juvenile justice systems to read: Juvenile justice systems, institutions, or authorities means agencies that include, but are not limited to, juvenile courts, correctional institutions, detention facilities, law enforcement, training schools, or agencies that use probation,

parole, and/or court ordered home confinement. We note that grantees under the RHY programs are not obliged to serve youth who are under probation or parole. The RHY program was created as an alternative to involving runaway and homeless youth in the law enforcement, child welfare, mental health, and juvenile justice system. Indeed, as discussed later in the preamble we propose to add a program-wide requirement that grantees not provide services that substitute for those that juvenile justice, child welfare, or other systems are legally responsible for providing to youth who have not been released from their supervision.

There are two definitions in the current regulations that are unnecessary, and accordingly we propose to delete: “law enforcement structure”, and “a locality.”

For runaway and homeless youth who are pregnant or who have children, congregate or scattered-site maternity-related services are essential.

Accordingly, we propose to define a key service: Maternity group home means a community-based, adult-supervised transitional living arrangement where client oversight is provided on site or on-call 24 hours a day and that provides pregnant or parenting youth and their children with a supportive environment in which to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote their long-term economic independence and ensure the well-being of their children.

We propose to add a definition for outreach to read as follows: Outreach means finding runaway, homeless, and street youth, as well as youth at risk of running away or becoming homeless, who might not use services due to lack of awareness or active avoidance, providing information to them about services and benefits, and encouraging the use of appropriate services. Outreach includes low-barrier services such as food packs and personal hygiene packs.

We include risk and protective factors under the list of technical assistance or short-term training that may be determined as necessary by HHS as a condition of funding. Therefore, we propose a definition of risk and protective factors to read: Risk and protective factors mean those factors that are measureable characteristics of a youth that can occur at multiple levels, including biological, psychological, family, community, and cultural levels, that precede and are associated with an outcome. Risk factors are associated with a higher likelihood of problem outcomes, and protective factors are

associated with a lower likelihood of problem outcomes.

Another core statutory term is runaway youth. We propose to update the existing definition to reflect the Act (section 387(4)), to read: Runaway youth means an individual under 18 years of age who absents himself or herself from home or place of legal residence without the permission of a parent or legal guardian.

We propose to revise the definition of runaway and homeless youth project to reflect the current scope of services under the Act. The revised definition would read: Runaway and homeless youth project means a community-based program outside the juvenile justice and child welfare systems that provides runaway prevention, outreach, shelter, and transition services to runaway, homeless, or street youth or youth at risk of running away or becoming homeless.

The expectation for Basic Center projects is that they effectively stabilize the youth over a short period of time while working with the youth to strengthen family relationships, assisting the youth in determining their best future course of action, and, to the extent appropriate, reunifying the youth with their families. The expectation for Transitional Living projects is that they effectively provide longer term housing support while working with the youth to develop skills and competencies that lead to self-sufficiency, improving family relationships, and planning for future education, employment and independent living. Certain exit outcomes align with these goals (including, but not limited to, reunification with family, residing in a private residence or residential program where rent is paid, residing in a program with a structured educational/vocational training program), while others are contrary to these goals. Therefore, we propose to add a definition of Safe and Appropriate Settings When Exiting Basic Center Program Services or Transitional Living Program Services. The definition would read: Safe and Appropriate Settings When Exiting Basic Center Program Services or Transitional Living Program Services means settings that reflect achievement of the intended purposes of the Basic Center and Transitional Living programs as outlined in section 382(a) of the Act. Safe and Appropriate Settings When Exiting Basic Center Program Services or Transitional Living Program Services are *not* exits:

- To another shelter;
- To the street;

- To a private residence, other than a youth who is staying stably with family, if the youth is not paying rent;

- To another residential program if the youth is not paying rent or if the youth’s transition to the other residential program was unplanned;

- To a correctional institute or detention center if the youth became involved in activities that lead to this exit after entering the program;

- To an unspecified other living situation; or

- To a living situation that is not known.

By defining “Safe and Appropriate Settings,” our intent is to move the field beyond just finding a place for the youth to stay. Basic Center projects must also work toward: (A) Alleviating the problems of runaway and homeless youth; (B) if applicable or appropriate, reuniting such youth with their families and encouraging the resolution of intra-family problems through counseling and other services; (C) strengthening family relationships and encouraging stable living conditions for such youth; and (D) assisting such youth in deciding on a future course of action.

The ultimate goal of Transitional Living projects is to provide those services that lead to self-sufficiencies. Beyond housing, Transitional Living projects are to address the following to meet the standard: (A) The number and characteristics of homeless youth served by such projects; (B) the types of activities carried out by such projects; (C) the ability of such projects to alleviate the problems of homeless youth; (D) the ability of such projects to prepare homeless youth for self-sufficiency; (E) the ability of such projects to assist homeless youth to decide on future education, employment, and independent living; (F) the ability of such projects to encourage the resolution of intra-family problems through counseling and development of self-sufficient living skills; and (G) activities and programs planned by such projects for the following fiscal year.

We include screening and assessment under the list of technical assistance or short-term training that may be determined as necessary by HHS as a condition of funding as well as within some of the proposed program standards. Therefore, we propose a definition of screening and assessment to read: Screening and assessment means standardized instruments and practices used to validly and reliably identify each youth’s individual strengths and needs across multiple aspects of health, wellbeing and behavior in order to inform appropriate

service decisions and provide a baseline for monitoring outcomes over time. Screening involves brief instruments, for example with trauma and health problems, which can indicate certain youth for more thorough diagnostic assessments and service needs. Assessment, which is used here to mean assessment more broadly than for the purposes of diagnosis, involves evaluating multiple aspects of social, emotional, and behavioral competencies and functioning in order to inform service decisions and monitor outcomes.

We also propose to define a service plan, sometimes called a treatment plan, to read: Service plan or treatment plan means a written plan of action based on the assessment of client needs and strengths and engaging in joint problem-solving with the client that identifies problems, sets goals, and describes a strategy for achieving those goals. To the extent possible, the plan should incorporate the use of evidence-based or evidence-informed interventions. It should also include safety planning.

We propose to retain the definition of short-term training as the provision of local, State, or regionally-based instruction to runaway or otherwise homeless youth service providers in skill areas that will directly strengthen service delivery.

From the Act (section 387(6)), we propose to define street youth to read: Street youth means an individual who is a runaway youth or an indefinitely or intermittently homeless youth who spends a significant amount of time on the street or in other areas that increase the risk to such youth for sexual abuse, sexual exploitation, prostitution, or drug and/or alcohol abuse. For purposes of this definition, youth means an individual who is age 21 or less.

We propose to retain the definition of State under the current rule, which defines State as any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

We propose to retain the definition of technical assistance as the provision of expertise or support for the purpose of strengthening the capabilities of grantee organizations to deliver services.

Finally, we propose to update the definition of temporary shelter to read: Temporary shelter means all shelter settings in which runaway and homeless youth are provided room and board, crisis intervention, and other services on a 24-hour basis for up to 21 days. If a youth stays at a facility for longer than 21 days, the agency must

utilize other funding sources when providing services and shelter for the extra days.

Subpart B—Runaway and Homeless Youth Program Grants

The existing rule contains a number of sections dealing with the purposes of the program, eligibility for grants, priority for grants, matching requirements, the period of grant awards, allowable costs, application procedures, criteria for grant funding decisions, and additional information for grantees. We propose revisions to all of these sections as well as to the title of the subpart to be Runaway and Homeless Youth Program Grants. These sections apply to all grants under the program.

Purpose

Currently, § 1351.10 asks, “What is the purpose of the Runaway and Homeless Youth Program grant?” We propose to re-title this section “What is the purpose of Runaway and Homeless Youth Program grants?” This change in title reflects the growth of the program over time from the core Basic Center Program to a broader range of grant types and purposes. Relatedly, we propose to amend the statement of purpose to emphasize not only transitional living services and other services added in recent years, but also the increasing emphasis on prevention and on the vulnerability of these youth. Under the proposal, the purpose of Runaway and Homeless Youth program grants would be to establish or strengthen community-based projects to provide runaway prevention, outreach, shelter, and transition services to runaway, homeless, or street youth or youth at risk of running away or becoming homeless. Youth who have become homeless or who leave and remain away from home without parental permission are disproportionately subject to serious health, behavioral, and emotional problems.^{1 2} They lack sufficient resources to obtain care and may live on the street for extended periods, unable to achieve stable safe living arrangements and at times putting themselves in danger.^{3 4} Many are

¹ Whitbeck, LB; Johnson, KD; Hoyt, DR & Cauce, AM. (2004). Mental disorder and comorbidity among runaway and homeless adolescents. *Journal of Adolescent Health*. 35(2): 132.

² Cauce, AM, et al. (2000). The characteristics and mental health of homeless adolescents. *Journal of Emotional and Behavioral Disorders*. 8(4):230.

³ Whitbeck, LB; Chen, X; Hoyt, DR; Tyler, KA & Johnson, KD. (2004). Mental disorder, subsistence strategies, and victimization among gay, lesbian, and bisexual homeless and runaway adolescents. *The Journal of Sex Research*. 41(4):329.

urgently in need of temporary shelter and services,⁵ including services that are linguistically appropriate, responsive to their complex social identities (i.e., race, ethnicity, nationality, religion/spirituality, gender identity/expression, sexual orientation, socioeconomic status, physical ability, language, beliefs, values, behavior patterns, or customs), and acknowledge the environment they come from. Services should take a positive youth development approach that ensures a young person a sense of safety and structure; belonging and membership; self-worth and social contribution; independence and control over one’s life; skills to develop plans for the future and set goals; and, closeness in interpersonal relationships.⁶ To make a successful transition to adulthood, runaway youth, homeless youth, and other street youth also need opportunities to complete high school or earn a general equivalency degree, learn job skills, and obtain employment. HHS operates three programs to carry out these purposes through direct local services: The Basic Center Program, the Transitional Living Program (including Maternity Group Homes), and the Street Outreach Program. HHS operates three additional activities to support achievement of these purposes: research, evaluation, and service projects; a national communications system to assist runaway and homeless youth in communicating with service providers; and technical assistance and training. The proposed rule covers all of these activities.

Eligibility for Grants

The existing rule asks in § 1351.11 “Who is eligible to apply for a Runaway and Homeless Youth program grant?” The eligibility requirements of the program have not changed significantly over the years but we propose changes to this section to conform the regulatory language to the current statute. We propose to state that all public (State and local) and private non-profit entities, and coordinated networks of such entities, are eligible to apply for a Runaway and Homeless Youth Program grant unless they are part of the law enforcement structure or the juvenile justice system. While specific regulatory

⁴ Greene, JM; Ennet, ST & Ringwalk, CL. (1999). Prevalence and correlates of survival sex among runaway and homeless youth. *American Journal of Public Health*. 89(9):1406.

⁵ Clark, R. & Robertson, M.J. (1996). *Surviving for the Moment: A Report on Homeless Youth in San Francisco*. Berkeley: Alcohol Research Group.

⁶ Taylor-Seehafer, MA. (2004). Positive youth development: Reducing the health risks of homeless youth. *MCN, American Journal of Maternal Child Nursing*. 29(1):36.

language is not needed, we wish to point out that most faith-based organizations meet the regulatory definition of non-profit.

Priority for Awards

The existing regulation addresses priority for awards in § 1351.12. We propose significant changes to the language regarding grant award priorities. We reference the new performance standards, we propose to raise the priority award level on the amounts available for award to \$200,000 (from \$100,000 in the current regulations), and we propose to raise the priority threshold on total project budgets, taking into account the funding from all sources, to \$200,000 (from \$150,000 in the current regulations). The change to the priority for grantees requesting awards for the Basic Center Program, the Transitional Living Program (including Maternity Group Homes), and the Street Outreach Program under a certain dollar level reflects inflation since the regulation was last revised. We also have indicated that future funding opportunity announcements may adjust these thresholds to account for inflation. We specifically state that we will give higher priority to those existing grantees that have performed better than other existing grantees in allocating funds, and to new applicants who are more likely to meet all applicable requirements than other new and/or existing grantees. For clarity, we specifically reference both performance standards and other requirements. This language allows new applicants to demonstrate a likelihood of meeting applicable performance and other regulatory or funding opportunity standards, without requiring prior experience. Of course, an applicant with prior experience may be more likely to demonstrate its capabilities, but we propose changing the existing rule to indicate prior experience shall be weighed along with performance. While the statute is clear about preference for prior experience, new requirements for performance standards makes clear that experience must be weighed along with performance. These procedures and priorities apply to all types of grantees, but only as applicable (e.g., we do not establish performance standards for research or demonstration projects.)

We call attention to the phrase “performed highly in comparison to other agencies.” We are not proposing that meeting every particular requirement, including performance standards, is a prerequisite for funding, although there may be cases where such a determination would be made (e.g., for

conforming to civil rights laws or conducting background checks). We are proposing that applicants must compete for funds with other agencies, and that relative performance will be a factor in making award decisions among existing grantees.

In discussing priorities, we do not specifically address geographic area(s) to be served. That will typically be addressed in funding opportunity announcements and may, depending on the type of grant, be national. We assume that either new applicants or existing grantees can compete for awards in the same geographic area. For example, a grantee already serving one city could apply for a grant to serve an additional city. As discussed later in this preamble in the performance standards section, we also do not propose to give specific numeric weights to failures to meet particular standards, whether performance standards or others. This allows for funding decisions that take into account unique local circumstances that favor or impede high performance, and for evidence that an applicant is both able and willing to correct a deficiency. This also allows for increases or decreases in grant awards to reward or penalize grantees whose performance is particularly high or modestly weak, without making the award decision “all or nothing.” Finally, it allows us to take into account availability of funds and other factors such as State allotment requirements. We note that the \$200,000 priority award level on grant awards is unrelated to the statutory requirement that each State has an allotment of not less than \$200,000. There may be, and usually are, multiple awards in each State. The statutory requirement simply means that the total of such awards in any State be at least \$200,000 (and \$70,000 for territories).

We request comments on these proposed priorities and on ways to improve or refine them.

Matching Requirements

We propose a change to § 1351.13 regarding matching share. The current regulatory language conflicts with the statute on the amount of funding required by grantees to satisfy the match requirement. The current language requires a non-Federal match amount of 10 percent of the Federal share. To align the statute and the regulations, we propose that the Federal share reflect 90 percent, thus the remaining 10 percent represents the match cost, cash or in-kind contributions.

We note that the language of the statute is phrased in terms implying an exact 10 percent matching share, but the

Department has always taken the position that the language should not be interpreted to prevent grantees from spending additional funds from their own resources.

Project Period

We have not proposed changes to § 1351.14, providing that the period for which a grant will be awarded is generally one year, renewable annually. The existing rule says that the project period during which the project will not have to re-compete for funds will not exceed five years and we see no reason to change this limit. Of course, we may specify a shorter project period in our program solicitations, and currently do so for the Basic Center Program and the Street Outreach Program, where the project period is generally three years.

Supportable Costs

We propose minor changes to update the language under § 1315.15 to more fully describe costs allowed under Runaway and Homeless Youth grants. Costs that can be supported include, but are not limited to, staff training and core services such as outreach, intake, case management, data collection, temporary shelter, transitional living arrangements, referral services, counseling services, and aftercare services. We retain the existing prohibition against acquisition or renovation costs that exceed 15 percent of the grant award, subject to potential waiver. We also propose adding language that clarifies that research and evaluation, communications, and technical assistance grants are allowed costs that pertain to their unique purposes.

Costs Not Allowable

We propose a change to the language under § 1351.16 that currently states only that capital costs for new facilities are not allowed under Runaway and Homeless Youth grants. We propose retaining this prohibition and also explicitly prohibiting payment for the operating costs of existing community centers or other facilities that are used partially or incidentally for services to runaway or homeless youth clients. This does not mean that a reasonable fraction of utility or other overhead costs could not be charged to our grant when a facility provides multiple services, but it does mean that such fraction would have to be based on a reasonable cost allocation method approved by HHS, such as proportion of square footage devoted exclusively to each service in the facility. Separable costs of the runaway and homeless youth project are, of course, fully reimbursable. The reason for this clarification is that we

have seen proposed project budgets that include disproportionate allocations of facility-wide or overhead costs to runaway and homeless youth projects that use only a small portion of the facility.

Application Procedures

Current rules under § 1351.17 provide that HHS will publish program announcements of availability of grant funds annually in the **Federal Register**, and includes specific but outdated procedures for obtaining announcements and submitting applications. We propose to change § 1351.17 to address three changes since the rule was last revised. First, proposed paragraph (a) recognizes that we now rely primarily on the Internet (rather than the **Federal Register**) for publication of our funding opportunity announcements. Second, under proposed paragraph (b) we now allow for electronic submission of completed grant applications through the Federal government's <http://www.grants.gov> Web site. We continue to allow for paper applications for grants. Third, our proposed language says that we publish such announcements periodically rather than annually. The timing and frequency varies by type of grant and has changed over time.

Funding Criteria

Under existing § 1351.18 we list a number of criteria that we use for deciding which grant applications to fund. We propose small technical changes to these criteria.

Under paragraph (a) we propose to retain the criteria that proposed projects meet funding priorities. We also add a clause making specific reference to our use of funding opportunity announcements to establish specific details of the broad requirements, standards, and evaluation criteria contained in this proposed rule. Under the proposal, in reviewing applications HHS will take into consideration factors including whether the grant application meets the particular priorities, requirements, standards, or evaluation criteria established in funding opportunity announcements. We renumber these criteria accordingly.

In paragraph (b), we propose to modify and combine the current requirements of paragraphs (b) and (c) for demonstrating "need" to require that the likely estimated number of unserved runaway and homeless youth in the area exceeds the capacity of existing services. That is, we do not require a census-like count of such youth, but merely a reasonable estimate that the number of such youth exceeds the

capacity of existing services. We welcome comment on these proposed changes.

Under proposed paragraph (c), we propose to retain the existing requirement that runaway and homeless youth centers maintain a minimum residential capacity of 4 and a maximum of 20 (except where the applicant assures that the State where the center or locally controlled facility is located has a State or local law or regulation that requires a higher maximum to comply with licensure requirements for child and youth serving facilities) for all youth residing at the shelter on any given night. We propose to clarify that the capacity standards apply only to grants that include such centers. We also propose to revise the regulation to require centers to have the number of staff sufficient to assure adequate supervision of and treatment for the number of clients served rather than a mandatory ratio of staff to clients. This change is for consistency with the statute at section 321(b)(2)(B). While we are not aware of any objective or agreed-upon basis for establishing such a ratio, an agency would refer to State laws and licensing regulations as they pertain to runaway and homeless youth shelters for guidelines. If no runaway and homeless youth shelter laws and licensing regulations have been established in a State, the agency would refer to State child welfare laws and regulations for youth. Agencies would be required to cite the guidelines they are following for the staff ratios they deem to be appropriate.

Under paragraph (d) we propose to slightly modify the criteria under current paragraph (e) removing the language concerning the 72 hour timeframe from admission for the program to make contact with family. The requirement is contained in Subpart C at new section 1351.21(e) and in proposed new Subpart D at § 1351.30(a)(1).

We propose to retain the language in current paragraphs (f)–(h) and renumber them (e)–(g).

We further propose to add a new paragraph (h) to include past performance in a RHY grant, including but not limited to programs standards. Current paragraphs (i) and (j) would be unchanged. A new paragraph (k) is proposed to include other factors as outlined in the funding opportunity announcements.

We welcome comment on all these proposed changes to the Funding Criteria and ask that commenters proposing alternatives provide, if possible, research evidence in support

of those alternatives. In this context, and throughout this proposed rule, we specifically ask commenters to distinguish between desirable best practices and minimum requirements that demonstrably preclude an applicant from providing an effective program.

Other Federal Requirements and Program Policies

Under the current rule, § 1351.19 contains a list of other rules and regulations that apply to applicants for, or recipients, of program funds. These include, for example, regulations concerning civil rights obligations of recipients and regulations concerning fraud, waste, and abuse. The existing text lists only five such rules. We propose amending it to include additional rules that also are specifically intended to apply to all HHS grantees or, in some cases, to all Federal grantees. The expanded list under proposed paragraph (a) includes rules related to civil rights requirements, to other client protections, to administrative requirements in HHS grant programs, and to preventing fraud or abuse. This expanded list does not attempt to list all the Federal laws and regulations (e.g., provisions of the Internal Revenue Code regarding non-profit status) that pertain to organizations that may be grant applicants or awardees. The provisions we list here are not all administered through either the Administration for Children and Families or its Runaway and Homeless Youth Program (though the agency may in some instances assist in their enforcement), but are for the most part administered by other HHS components or by other Federal agencies that set the conditions and enforcement mechanisms that apply to those provisions, and that determine whether and in what circumstances grant-related penalties may apply. For example, the HHS Office for Civil Rights enforces civil rights protections. This section already contains in paragraph (b) several additional provisions, mainly client confidentiality protections, that we do not propose to change. In paragraph (c), we propose to update our reference to the Act as defined in this proposed rule. We also propose to amend the title of the section to include "other Federal Requirements" in the title.

Subpart C—Additional Requirements That Apply to All Runaway and Homeless Youth Program Local Services Grants

Subpart C of the existing rule contains three crosscutting program-wide requirements that apply to all local

services grants, at § 1351.20(a), (b), and (c). At the time the rule was last revised, certain types of grants, such as those under the Street Outreach Program, were not part of the overall Runaway and Homeless Youth Program. We propose to amend this section to make clear that it applies to the three major types of local services grants. It does not, however, apply to grants for research, evaluation, demonstration and service projects; grants for a national communications system to assist runaway and homeless youth in communicating with service providers; and grants for technical assistance and training.

We propose a substantial expansion of regulatory provisions under Subpart C. We are aware that a myriad of additional provisions could be considered. For example, we considered including specific board composition and governance requirements for all grantees, and specific standards for counseling clients and for the condition of residential centers and shelters. We also considered specific planning requirements for determination of project-specific priorities and procedures, and detailed consultation requirements for interaction with other community providers. We considered proposing to require detailed documentation of case planning for individual clients. Some of these ideas were suggested in our consultative process. However, in keeping with one of the overarching principles we heard through consultation, that the standards of any kind—whether performance or procedural—should facilitate rather than impede local flexibility in creating and operating effective programs that respond to local needs and priorities, we do not include them. They involve processes that need to remain flexible to adjust to local or client circumstances, could result in potentially burdensome record-keeping or reporting, possibly divert scarce staff resources, or lead to other potential problems.

We welcome comments on whether there is substantial evidence that these or any other requirements not proposed here would improve program outcomes, either overall or for each type of grant, at reasonable effort and cost. We also request comment on whether placing either the standards we propose or additional standards in funding announcements rather than in codified regulations would allow sufficient flexibility to grantees or would hinder our ability to use targeted initiatives to improve program practices.

Under paragraph (a), we propose revising the language requiring grantees to participate in technical assistance

and training in order to allow flexibility in which techniques will be used, and propose clarifying that grantees must also accept monitoring. We propose to expand this list considerably from the list in the current regulation. This list reflects primarily the evolution and expansion over the years of the training and technical assistance program, and the items listed are all conducted currently under the program.

Requirements we propose to add are core competencies for youth workers, core support services, cultural and linguistic diversity, background checks, and ethics and staff safety. In particular and reflecting current program priorities, we propose positive youth development as a priority area for training or technical assistance. Under our proposal, grantees shall participate in technical assistance or short-term training as a condition of funding, as determined necessary by HHS, in areas such as, but not limited to:

- Aftercare services or counseling;
- Background checks;
- Core competencies of youth workers;
- Core support services;
- Crisis intervention techniques;
- Cultural and linguistic diversity;
- Development of coordinated networks of private nonprofit agencies and/or public agencies to provide services;
- Ethics and staff safety;
- Fiscal management;
- Low cost community alternatives for runaway or otherwise homeless youth;
- Positive youth development;
- Program management;
- Risk and Protective Factors related to youth homelessness;
- Screening and assessment practices;
- Shelter facility staff development;
- Special populations (tribal youth; lesbian, gay, bisexual, and transgender youth; youth with disabilities; youth victims of trafficking, sexual exploitation or sexual abuse);
- Trauma and the effects of trauma on youth;
- Use of evidence-based and evidence-informed interventions;
- Youth and family counseling; and
- Confidentiality policies and protocols.

We request comments on the expanded list of subjects. This is a substantial addition but one that we believe is useful to reflect the current set of policy and program priorities as set forth in the Act and in the program solicitations and management improvements that have been made in the overall program in recent years. Virtually all of these proposed

provisions are derived from specific statutory mandates, and are already part of standard operating procedures. Many participants in our consultative process also suggested most of these items, reflecting the general consensus as to their importance in operating effective services.

Under paragraph (b), we propose minor technical revisions to update the existing provision requiring coordination with the National Runaway Safeline. Under our proposal, grantees shall coordinate their activities with the 24-hour national toll-free communication system, which links runaway and homeless youth projects and other service providers with runaway or otherwise homeless youth, as appropriate to the specific activities provided by the grantee. At present, this system is called the National Runaway Safeline, its Web site is www.1800runaway.org, and the toll-free number is 1–800–RUNAWAY.

Under paragraph (c), we also propose a technical revision to the reporting provision to require grantees to submit statistical reports that profile the clients served and that provide management and performance information in accordance with guidance provided by HHS. Such data submission is handled for services programs through the Runaway and Homeless Youth Management Information System (RHYMIS), which is described in detail at <https://www.acf.hhs.gov/programs/fysb/rhymis>. RHYMIS has been a major innovation and improvement tool in program data collection, but from a regulatory perspective updating the regulatory reference is a minor change. The existing rule quotes specific statutory language in place when the rule was written. The Act now contains additional requirements (see in particular sections 312(b)(7) and (8), and section 322(a)(9)). For example, it explicitly states that runaway and homeless youth projects “shall keep adequate statistical records profiling the youth and family members whom it serves,” that grantees “shall submit annual reports to the Secretary detailing how the center has been able to meet the goals of its plans,” and that grantees shall submit “statistical summaries describing . . . the number and characteristics of the runaway and homeless youth . . . who participate . . . and the services provided to such youth.” We propose to review this section to require appropriate reporting and to delete specific quotations from the Act.

In its final stage, this rule may impose additional requirements if the rulemaking process or other information

leads us to decide that RHYMIS could be improved or expanded. We welcome comments on RHYMIS.

We propose adding a new regulatory requirement for outreach for the three major grant programs. Outreach is a key statutory requirement of these programs. We propose in paragraph (d) that grantees shall perform outreach to locate runaway and homeless youth and youth at risk of running away or becoming homeless, and to coordinate activities with other organizations serving the same or similar clients. We request comments on this new requirement.

Particular attention is needed for clients who may have fled foster care or a correctional program. It also is important that runaway and homeless youth projects not be used as a substitute for services that these or other programs are legally obliged to provide. We are especially interested in comments on the following two proposed requirements. First, under paragraph (e) we propose that grantees shall develop and implement a plan for addressing youth who have run away from foster care placement or correctional institutions, and for returning those youth appropriately to the responsible organizations, in accordance with Federal, State, or local laws that apply to these situations.

Second, under paragraph (f) we propose that grantees shall take steps to ensure that youth who are under the legal jurisdiction of the juvenile justice or child welfare systems receive services from those systems until such time as they are released from the jurisdiction of those systems. The purpose of these provisions is to provide a clear demarcation between services that are the legal and financial responsibility of other programs, and services that are the responsibility of the Runaway and Homeless Youth Program. Because the availability of Federal funds varies among programs, and where Federal funds are available the matching rates usually vary, other State and local agencies have financial incentives to blur these responsibilities. We strongly encourage grantees to take steps prevent other programs from displacing their costs onto these programs while also providing continuous service to youth.

Additionally, we propose three provisions focusing on the need to serve youth outside the program. They are found in existing funding opportunity announcements. Under proposed paragraph (g), grantees shall develop and implement an aftercare plan covering at least 6 months to stay in contact with clients who leave the program in order to ensure their ongoing safety. A youth's individual aftercare

plan shall outline what services were provided, including appropriate referrals for needed health care services, the youth's housing status, and the rate of participation and completion of the services in the plan at 3 months and at 6 months after exiting the program. In paragraph (h), grantees shall develop and implement a plan for health care services referrals for youth. Under proposed paragraph (i), grantees shall assist youth to stay connected with their schools or to obtain appropriate educational services. This includes coordination with McKinney-Vento school district liaisons, designated under the McKinney-Vento Homeless Assistance Act, to assure that runaway and homeless youth are provided information about the services available under that statute. Under that law, which is the primary piece of Federal legislation dealing with the education of homeless children in U.S. public schools, school districts are required to provide equal access to the same free, appropriate public education provided to other children and youth and to undertake additional steps as needed for such access. For example, school districts must identify potential barriers to the education of homeless youth, and homeless youth may not be segregated from other students.

The Act, at sections 312(b)(13) and 322(a)(16), specifically requires grantees to develop emergency plans. We propose to adopt this requirement under paragraph (j) by requiring that grantees develop and document plans that address steps to be taken in case of a local or national situation that poses risk to the health and safety of staff and youth. Emergency preparedness plans should, at a minimum, include routine preventative maintenance of facilities (e.g. fire extinguishers and alarms checked, furnace serviced) as well as preparedness, response, and recovery efforts. The plan should contain strategies for addressing evacuation, security, food, medical supplies, and notification of youths' families. In the event of an evacuation due to specific facility issues, such as a fire, loss of utilities, or mandatory evacuation by the local authorities, an alternative location needs to be designated and included in the plan. Grantees must immediately provide notification to their Family and Youth Service Bureau project officer and grants officer when evacuation plans are executed.

The Runaway and Homeless Youth Program does not assure or attempt to assure that its grantees meet any of the hundreds of State or local laws or regulations or other requirements that may apply to grantees or to individual

staff members. That is the responsibility of State or local agencies charged with enforcing those requirements. The operation of shelters, however, is such an integral part of the program and in some instances the location of shelters so controversial that we believe it prudent as a condition of grant award to require that grantees shall ensure that all shelters that they operate are licensed where that is required, and determine that any shelters to which they regularly refer clients have evidence of current licensure, if licensure is applicable to shelters of that type. We add this requirement under proposed paragraph (k). We do not mean by this language to suggest that grantees must independently verify particular conditions imposed as a condition of licensure at facilities to which they refer clients (that is the responsibility of the State or local officials who make licensure decisions), but simply that grantees must determine that such shelters have a current license where one is required. Of course, grantee-operated facilities also are responsible to State or local authorities for meeting any requirements, whether required for licensure or not, imposed by those authorities as a condition of operation. Failure to meet any applicable State or local legal requirements as a condition of operation may be grounds for grant termination.

Under paragraph (l), we propose to require that all employees be subject to a broad range of background checks for criminality and suitability (see the definition of background check). We also propose to require that host homes be subject to criminal and child abuse checks. We believe that current methods of obtaining background checks are reasonably simple, straightforward, and inexpensive. These policies are already operational and a requirement in the Funding Opportunity Announcement. We welcome comments on any potential problems with the proposed requirement and with any suggestions as to improving its scope.

Positive youth development (PYD) has been a central framework of the program for years. PYD emphasizes:

- Healthy messages to adolescents about their bodies, behaviors, interpersonal relationships, and interaction;
- Safe and structured places for teens to study, recreate, and socialize;
- Strong relationships with adult role models;
- Skill development in literacy competence, work readiness, and social skills; and
- Opportunities for youth to serve others and build self-esteem.

Runaway and homeless youth projects that adopt these principles provide the youth they serve with opportunities for positive use of time, for positive self-expression and self-development, and for constructive civic and social engagement. Accordingly, we propose under paragraph (m) to require PYD on a program-wide basis. Under this paragraph, grantees shall utilize and integrate into the operation of their projects the principles of positive youth development, including healthy messages, safe and structured places, adult role models, skill development, and opportunities to serve others.

As previously discussed in this preamble, there are numerous other possible requirements that could be included in the final rule. For example, we could require certain kinds of staff training. We do not propose such additional requirements for three reasons. First, it is difficult to craft requirements that do not unduly constrain grantee flexibility by imposing a “one size fits all” approach that does not in fact reasonably apply to particular grantees or particular situations or particular staff. Second, such requirements almost by necessity create burdens, e.g. for recordkeeping or reporting to demonstrate that grantees meet the requirement. Third, there is an alternative mechanism in the form of funding opportunity announcements. These announcements provide the flexibility to add particular requirements (including temporary priorities) without going through a rulemaking process and, more importantly, allow far more flexibility than codified rules normally allow. For example, the 2013 funding opportunity announcement for the Basic Center Program (<http://www.acf.hhs.gov/grants/open/foa/view/HHS-2013-ACF-ACYF-CY-0575>) gives examples of practices to follow or services that agencies can provide, all flexibly described. This language allows grantees the option to provide most but not all of these services. This would allow, for example, for the situation in which some other agency provides a key service and the grantee can use referral arrangements. Particularly in a program dealing with such complex problems, and given the extreme variation in service availability from other providers in particular localities, we believe that funding opportunity announcements are often a superior vehicle for encouraging certain practices.

To this end, we propose to add at paragraph (n) that grantees provide such other services and meet such additional requirements as the Department of Health and Human Services determines

are necessary to carry out the purposes of the statute, as appropriate to the services and activities for which they are funded. These services and requirements are articulated in the funding opportunity announcements and other instructions issued by the Secretary or secretarial designees. This includes operational instructions and standards of execution determined by the Secretary or secretarial designees to be necessary to properly perform or document meeting the requirements applicable to particular programs or projects.

In addition to the requirements all RHY grantees must meet, there are additional requirements specific to each of the three core RHY programs which stem from the Act and the unique purposes of each program.

We propose to create a new section § 1351.21 “What are the additional requirements that the Basic Center Program grantees must meet?”. There are four additional program specific requirements that are central to the purposes of the Basic Center Program. First, under proposed paragraph (a) all Basic Center grantees shall have an intake procedure that is available 24 hours a day and 7 days a week to all youth seeking services and temporary shelter. The intake process must, at all hours, enable staff to address and respond to young people’s immediate needs for crisis counseling, food, clothing, shelter, and health care services. The second proposed requirement under paragraph (b), describes the largest and arguably most important function described under the Act for Basic Center grantees, requiring that grantees shall provide, either directly or through arrangements, access to temporary shelter 24 hours a day and 7 days a week. Any grantee that did not provide temporary living services to eligible youth would not be meeting an essential function of the program (section 311(a)(2) of the Act). Note that this requirement allows for a combination of facilities that are directly operated by the grantee, operated by others, or accessible through referral. Third, under paragraph (c), we propose to require that Basic Center grantees provide case management, counseling and referral services that meet client needs and that encourage when in the best interests of youth particularly with regard to safety, the involvement of parents or legal guardians. Under paragraph (d), we propose to require that grantees provide additional core support services to clients both residentially and non-residentially, as appropriate. The core services must include case planning,

skill building, recreation and leisure activities, and aftercare. Again, this is an essential function of the program and codification does not require changes in program operations. Under paragraph (e), we propose to require that grantees make contact with the parent(s), legal guardian or other relatives of the youth within 72 hours of entering the program with a “best interest of the youth” exception allowed for disclosure of the location if additional information is needed to ensure the safety of the youth. The “best interest of the youth” would be defined by the State child welfare legal requirements with respect to child protective services and law enforcement mandatory reporting. Finally, under paragraph (f), we propose to include grantees be subject to any additional requirements that are included in the annual funding opportunity announcement (FOA).

We also propose a new section § 1351.22 “What are the additional requirements that the Transitional Living Program and Maternity Group Home grantees must meet?”. To include specific requirements for core services to be provided by the programs. Under paragraph (a), we would require that grantees provide transitional living arrangements and additional core services including case planning/management, counseling, skill building, consumer education, referral to social and health care services, and education, recreation and leisure activities, aftercare and, as appropriate, parenting skills, child care, and child nutrition. Note that this language requires for Maternity Group Home grantees a focus on parenting skills, childcare, and child nutrition. Additionally, under paragraph (b), we require that TLP and MCP grantees be subject to any additional requirements included in the funding opportunity announcement.

We propose to create a new section § 1351.23 “What are the additional requirements that the Street Outreach Program grantees must meet?”. The proposed requirements are specific to the purposes of the Street Outreach program. We propose under paragraph (a) to require that SOP grantees provide services designed to assist clients in leaving the streets, in making healthy choices, and in building trusting relationships in areas where targeted youth congregate. Under paragraph (b), we require SOP grantees provide directly or by referral other core services to their clients. Finally, under paragraph (c), we require that SOP grantees be subject to any additional requirements included in the funding opportunity announcement.

We request comments on each of these proposed provisions and suggestions for deletions or additions. We believe that each is clearly justified by the Act and by recent and current priorities for programs conducted under the Act. We are particularly interested in suggestions for additions that would directly and substantially further the purposes of these programs without unduly limiting flexibility on the part of grantees or creating substantial new paperwork or reporting requirements.

Subpart D—What Are the Runaway and Homeless Youth Program-Specific Standards?

In addition to requirements that apply to all Runaway and Homeless Youth programs, the Department proposes to establish a new Subpart that creates specific standards for each major type of local services grant, with a focus on performance-based standards. These new performance standards were mandated by the Act, as amended by the Reconnecting Homeless Youth Act of 2008. Performance standards focus directly on program goals and create or use criteria that either measure goal attainment or are close proxies to meeting the goal. In addition, for each program, we propose standards encompassing core functions and services that are essential for success in that program. We believe the performance standards can best be organized by building upon four core outcomes based on research which indicates that improvements on risk and protective factors can serve as pathways to get to better outcomes in social and emotional well-being, permanent connections, education or employment, and stable housing.^{7 8 9} These four core outcomes are expected to lead to healthy and productive transitions to adulthood for homeless youth in the following ways:

(1) Social and Emotional Well-being includes the development of key competencies, attitudes, and behaviors that equip a young person experiencing homelessness to avoid unhealthy risks and to succeed across multiple domains of daily life, including school, work, relationships, and community; (2)

Permanent connections include ongoing attachments to families or adult role models, communities, schools, and other positive social networks which support young people's ability to access new ideas and opportunities that support thriving and they provide a social safety net when young people are at-risk of re-entering homelessness; (3) Education or employment includes high performance in and completion of educational and training activities, especially for younger youth, and starting and maintaining adequate and stable employment, particularly for older youth. Achievements in education and employment increase a youth's capacity to support himself or herself and avoid future homelessness; and (4) Stable housing includes a safe and reliable place to call home. Stable housing fulfills a critical and basic need for homeless youth. It is essential to enabling functioning across a range of life activities.

We do not propose to establish such standards for grants for research, evaluation, demonstration and service projects; grants for a national communications system to assist runaway and homeless youth in communicating with their families and service providers; and grants for technical assistance and training.

The consultative process involved extensive discussion of potential performance standards. During the consultation process, the participants looked at current practices and discussed minimum expectations versus exceptional service. For example, the participants of the consultation process discussed appropriate methods for notifying parents and legal guardians when a young person enters a shelter: Telephone, email or other types of communication. The best method for parent/guardian notification depends on grantees' technological capacity, community expectations, and other factors. For that reason, the standard should focus on the timing of the notification and not the methods to ensure that grantees with various communication systems can achieve the standard.

Basic Center Program Standards

We propose a new § 1351.30 for Basic Center Grantees. For these grantees we propose under paragraph (a) that grantees must contact the parent(s), legal guardian or other relatives of clients within 72 hours of entering the program to inform them that the youth is safe, with a determination to be made on a case-by-case basis of whether it is in the best interests of the youth to notify the parent(s), legal guardian or

other relatives of the location of the youth until further information has been gathered to assure safety. Under paragraph (b), we propose to require grantees shall maintain at 90 percent or higher the proportion of youth transitioning to safe and appropriate settings when exiting Basic Center Program services. Paragraph (c) proposes that grantees shall ensure that youth have received appropriate counseling services informed by screening and assessment of each youth's psychosocial strengths and needs. Data shall be reported by each grantee on the type of counseling each youth received (individual, family and/or group counseling), the participation rate based on a youth's service plan or treatment plan, and the completion rate based on a youth's service plan or treatment plan. Under paragraph (d), we propose that grantees that choose to provide street-based services, home-based services, drug and/or alcohol abuse education and prevention services, and/or testing for sexually transmitted diseases (at the request of the youth) shall ensure youth receive the appropriate services informed by screening and assessment of each youth's strengths and needs. Data shall be reported on the completion rate for each service provided based on the youth's service plan or treatment plan.

These performance standards both involve critical and measurable program objectives. The first standard requires parental contact (if feasible, of course) within 72 hours. We encourage contact within 24 hours. The second requires that these centers achieve 90 percent or higher the proportion of youth living in safe and appropriate settings immediately after exiting Basic Center Program services. We note that RHYMIS data show that on average, grantees have achieved a 92 percent success rate under the second measure. We welcome specific comment on these standards. Proposed paragraph (c) emphasizes the statutory requirement for counseling services and outlines specific data to be reported. Proposed paragraph (d) outlines specific data to be reported for services grantees may choose to provide based on the statute.

In addition to these proposed measures, we welcome comment on measures for the Basic Center Program that will demonstrate youth outcomes post-exit.

Transitional Living Program Standards

We propose to add a new section § 1351.31 for Transitional Living Programs (including Maternity Group Homes). Under paragraph (a), we propose to require as performance

⁷ Kidd, S., & Shahar, G. (2008). Resilience in homeless youth: The key role of self-esteem. *American Journal of Orthopsychiatry*, 78 (2), 163.

⁸ Milburn, N. G., Jane Rotheram-Borus, M., Batterham, P., Brumback, B., Rosenthal, D., & Mallett, S. (2005). Predictors of close family relationships over one year among homeless young people. *Journal of Adolescence*, 28(2), 263–275.

⁹ Milburn, N., Liang, L., Lee, S., Rotheram-Borus, M., Rosenthal, D., Mallett, S., et al. (2009). Who is doing well? A typology of newly homeless adolescents. *Journal of Community Psychology*, 37 (2), 135–147.

standards that grantees maintain at 90 percent or higher the proportion of youth transitioning to safe and appropriate settings when exiting Transitional Living Program services. Under paragraph (b), we propose that grantees maintain at 45 percent or higher the proportion of youth who are engaged in community service and service learning activities while in the program. In proposed paragraph (c), grantees shall ensure youth are engaged in educational advancement, job attainment skills or work activities while in the program. In proposed paragraph (d), grantees shall ensure and report that youth receive health care services as determined within their health care referral plan. Finally, under proposed paragraph (e), MGH grantees shall ensure and report that youth receive consistent pre-natal care, well-baby exams, and immunizations for the infant while in the program. We note that grantees achieved an 86 percent success rate on average in FY 2007 under the safe exit measure. Additionally, we note that grantees achieved a 42 percent success rate on average in FY 2007 under the engagement measure. We believe that these standards are readily achievable by well-run programs.

We welcome specific suggestions for improvements to these standards. In addition to these proposed measures, we welcome comment on measures for the Transitional Living Program that will demonstrate youth outcomes post-exit.

Street Outreach Program Standards

We propose to add a new § 1351.32 for the Street Outreach Program. Creating a reasonably achievable performance measure for this program is difficult because of the circumstances under which it operates (e.g., meeting youth in unstructured street situations). As currently stated in the Onsite Review Protocol: Runaway and Homeless Youth Programs (at http://www.acf.hhs.gov/programs/fysb/content/docs/rhy_review_protocol/index.htm but subject to future change), in its section on performance standards, the “Street Outreach Program provides services to youth under circumstances that make a straightforward adaptation of some of the elements of the performance standards impractical” (Introduction, page 3).

We are, however, considering requiring the following approach: The most important activity under this program is simply contacting street youth, and we already collect data on the total number of contacts (counting a youth contacted twice as two contacts).

Accordingly, we propose as a performance measure the number of total contacts made by the project, giving the projects credit for repeatedly reaching youth. A “contact” is the engagement between Street Outreach Program staff and homeless youth in need of services that could reasonably lead to shelter or significant harm reduction. FYSB is open to public comment on the proposed definition. This measure has the defect of potential unreliability, and it is difficult to set an actual numeric standard that would not unfairly penalize smaller grantees. Unlike our proposed performance standards for the other programs there is no denominator against which to calculate a percentage. Nonetheless, we propose to use the total number of contacts with homeless or runaway youth as a performance measure, but not to set a numeric standard at this time. An alternative might be to use the percent of youth contacted that accept shelter or other services—such as referrals, family reunification services, conflict resolution, or mediation counseling, and case management—as a performance standard. We welcome comment on these options and suggestions for other alternatives.

We request comments on the proposals for all three programs and recommendations for alternatives. We do not propose performance standards for technical assistance and other grants that do not provide direct services. We do not believe that support grants such as these lend themselves to across-the-board, outcome-oriented performance standards such as those proposed here. We opt to include benchmarks in some of the proposed performance standards, those where historic data exists to allow for a reasonable benchmark to be set, rather than leaving it to the funding opportunity announcement or other guidance mechanism.

We propose to create a new section § 1351.33 “How and when will performance standards for the Runaway and Homeless Youth Program be revised?”. For those performance standards for which benchmarks are not set within this Notice of Proposed Rulemaking, benchmarks will need to be set in the coming years as data are collected. Additionally, as grantees improve performance, it will be necessary to adjust the benchmark on a given performance standard in the coming years. Furthermore, as more is learned about how to improve outcomes, performance standards themselves may need to be modified or added. The Notice of Proposed Rulemaking (NPRM) process takes a considerable amount of time and is not

conducive to on-going adjustments. Therefore, in order to ensure that performance standards as well as the benchmarks set within a given performance standard keep pace with improvements grantees are able to make over time, we are proposing that the Secretary may, based upon available program data, add, amend, or suspend performance standards and/or benchmark levels when appropriate. All performance standards and benchmark levels will be consistent with the performance standards provision in the most current reauthorization of the Runaway and Homeless Youth Act and will relate to one or more four core outcomes: Social and emotional well-being; permanent connections; education or employment; and/or stable housing. Notification to grantees shall be given in advance of the revision through a public notification mechanism such as a funding opportunity announcement, policy guidance or other appropriate means. We welcome comment on how performance standards and benchmarks can be set and/or adjusted in a timely, yet transparent and public, manner.

We propose to create a new section § 1351.34 “When Are Program-Specific Requirements Effective?”. After we review public comments, the Department will make final decisions on these proposed requirements and will then issue a final rule. Normally, a final rule contains a date section with language such as this: These final regulations are effective on June 13, 2014. We intend to use this standard approach. We also are proposing in § 1351.34, for the local services program specific requirements, specific language that would delay the actual imposition of those requirements until the beginning of the next budget period. We propose that grantees shall meet program specific requirements, as applicable, upon the effective date of those requirements, or starting at the beginning of the next budget period for the grant, whichever comes later. Since most budget periods begin on October 1 of each year, this means that grantees would have however many days there are between the issuance of final regulations and that date, but never less than 60 days. The purpose of this delay is threefold. First, it avoids the need to assess performance over a fraction of a grantee’s annual budget period, i.e. over a fraction of a year, but instead uses a full year of performance as the standard for assessment. Second, it facilitates comparisons among grantees, by using a full year of performance as uniform basis for comparison. Third, and most

important, it provides time for grantees to prepare for these requirements, and for the Family and Youth Services Bureau (FYSB) to provide technical assistance and training to assist them. We appreciate that some grantees, particularly TLP grantees, operate on more staggered schedules and will have less time than others. We would expect to target early help on those facing the shortest deadlines. We welcome comments on this proposed approach and suggestions for alternatives.

VII. Impact Analysis

Paperwork Reduction Act

This proposed rule contains no new information collection requirements. We note that the existing RHYMIS information collection system has been renewed through FY 2013. We request comments on whether anything in this rule should, if adopted, suggest a change in RHYMIS. In particular, we want to be sure that RHYMIS reflects all performance standards in any future revision. We also welcome comments on technical or implementation changes in RHYMIS that might facilitate measurement of performance or otherwise assist in achieving higher performance.

Regulatory Flexibility Act

The Secretary certifies that this proposed rule will not result in a significant economic impact on a substantial number of small entities. We have not proposed any new requirements that would have such an effect. Our proposed standards would almost entirely conform to the existing statutory requirements and existing practices in the program. In particular, we have proposed imposing only a few new process, procedural, or documentation requirements that are not encompassed within the existing rule, existing funding opportunity announcements, or existing information collection requirements. None of these would impose a consequential burden on grantees. Accordingly, an Initial Regulatory Flexibility Analysis is not required.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. The Executive Order requires a Regulatory Impact Analysis for proposed or final rules with an annual economic impact of \$100 million or more. Nothing in this

proposed rule approaches effects of this magnitude. Nor does this proposed rule meet any of the other criteria for significance under the Executive Order. This proposed rule has been reviewed by the Office of Management and Budget.

Congressional Review

This proposed rule is not a major rule (economic effects of \$100 million or more) as defined in the Congressional Review Act.

Federalism Review

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. This rule will not have substantial direct impact on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with the Executive Order we have determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Family Impact Review

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any new or adverse impact on the autonomy or integrity of the family as an institution. Like the existing rule and existing program practices, it directly supports family well-being. Since we propose no changes that would affect this policy priority, we have concluded that it is not necessary to prepare a Family Policymaking Assessment.

List of Subjects in 45 CFR 1351

Administrative practice and procedure, Grant programs—Social programs, Homeless, Reporting and recordkeeping requirements, Technical assistance, Youth.

(Catalog of Federal Domestic Assistance Program Numbers 93.550, Transitional Living for Homeless Youth; 93.557, Education and Prevention Grants to Reduce Sexual Abuse of Runaway, Homeless and Street Youth; and 93.623, Basic Center Grants for Runaway Youth)

Dated: April 4, 2014.

Mark Greenberg,

Acting Assistant Secretary for Children and Families.

Approved: April 7, 2014.

Kathleen Sebelius,

Secretary.

For the reasons set out in the preamble, title 45 CFR Part 1351 is proposed to be amended as follows:

PART 1351—RUNAWAY AND HOMELESS YOUTH PROGRAM

■ 1. The authority citation for part 1351 continues to read as follows:

Authority: 42 U.S.C. 5701.

Subpart A—Definition of Terms

■ 2. Revise § 1351.1 to read as follows:

§ 1351.1 Significant Terms.

For the purposes of this part:

Act means the Runaway and Homeless Youth Act as amended, 42 U.S.C. 5701 *et seq.*

Aftercare means additional services provided beyond the period of residential stay that offer continuity and supportive follow-up to youth served by the program.

Background check means the review of an individual employee's or employment applicant's personal information, which shall include verification of educational credentials and employment experience, as well as a national examination of the individual's criminal records, and an examination of the individual's driving records, licensing history, child abuse or neglect history. Volunteers who come into contact with children and youth served or proposed to be served by the agency must also undergo a background check.

Budget period means the interval of time into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes.

Case management means assessing the needs of the client and, as appropriate, arranging, coordinating, monitoring, evaluating, and advocating for a package of services to meet the specific needs of the client.

Client means a runaway, homeless, or street youth, or youth at risk of running away or becoming homeless, who is served by a program grantee.

Congregate care means a shelter type that combines living quarters and restroom facilities with centralized dining services, shared living spaces, and access to social and recreational activities.

Contact means the engagement between Street Outreach Program staff

and homeless youth in need of services that could reasonably lead to shelter or significant harm reduction.

Core competencies of youth worker means the ability to demonstrate skills in six domain areas:

(1) Professionalism (including, but not limited to, consistent and reliable job performance, awareness and use of professional ethics to guide practice);

(2) Applied positive youth development approach (including, but not limited to, skills to develop a positive youth development plan and identifying the client's strengths in order to best apply a positive youth development framework);

(3) Cultural and human diversity (including, but not limited to, gaining knowledge and skills to meet the needs of clients of a different race, ethnicity, nationality, religion/spirituality, gender identity/expression, sexual orientation);

(4) Applied human development (including, but not limited to, understanding the needs of those at risk and with special needs);

(5) Relationship and communication (including, but not limited to, working with clients in a collaborative manner); and

(6) Developmental practice methods (including, but not limited to, utilizing methods focused on genuine relationships, health and safety, intervention planning).

Counseling services means the provision of guidance, support, referrals for services including, but not limited, to health services, and advice to runaway or otherwise homeless youth and their families, as well as to youth and families when a young person is at risk of running away. These services are designed to alleviate the problems that have put the youth at risk of running away or contributed to his or her running away or being homeless.

Drop-in center means a place operated and staffed for runaway or homeless youth that clients can visit without an appointment to get advice or information, to receive services or service referrals, or to meet other runaway or homeless youth.

Drug abuse education and prevention services means services to prevent or reduce drug and/or alcohol abuse by runaway and homeless youth, and may include:

(1) Individual, family, group, and peer counseling;

(2) Drop-in services;

(3) Assistance to runaway and homeless youth in rural areas (including the development of community support groups);

(4) Information and training relating to drug and/or alcohol abuse by

runaway and homeless youth to individuals involved in providing services to such youth; and

(5) Activities to improve the availability of local drug and/or alcohol abuse prevention services to runaway and homeless youth.

Health care services means physical, mental, behavioral and dental health services and, in the case of Maternity Group Homes mean those provided to the child of the youth; and where applicable and allowable within a program, family or household members of the youth shall receive information on appropriate health related services.

Home-based services means services provided to youth and their families for the purpose of preventing such youth from running away or otherwise becoming separated from their families and assisting runaway youth to return to their families. It includes services that are provided in the residences of families (to the extent practicable), including intensive individual and family counseling and training relating to life skills and parenting.

Homeless youth means an individual who cannot live safely with a parent, guardian or relative, and who has no other safe alternative living arrangement. For purposes of Basic Center Program eligibility, a homeless youth must be less than 18 years of age (or higher if allowed by a State or local law or regulation that applies to licensure requirements for child- or youth-serving facilities). For purposes of Transitional Living Program eligibility, a homeless youth cannot be less than 16 years of age and must be less than 22 years of age (unless the individual commenced his or her stay before age 22, and the maximum service period has not ended).

Host family home means a family or single adult home that provides shelter to a homeless youth.

Intake means a process for gathering information to assess eligibility and the services required to meet the immediate needs of the client.

Juvenile justice systems, institutions, or authorities means agencies that include, but are not limited to, juvenile courts, correctional institutions, detention facilities, law enforcement, training schools, or agencies that use probation, parole, and/or court ordered confinement.

Maternity group home means a community-based, adult-supervised transitional living arrangement where client oversight is provided on site or on-call 24 hours a day and that provides pregnant or parenting youth and their children with a supportive environment in which to learn parenting skills,

including child development, family budgeting, health and nutrition, and other skills to promote their long-term economic independence and ensure the well-being of their children.

Outreach means finding runaway, homeless and street youth, or youth at risk of becoming runaway or homeless, who might not use services due to lack of awareness or active avoidance, providing information to them about services and benefits, and encouraging the use of appropriate services.

Risk and protective factors mean those factors that are measurable characteristics of a youth that can occur at multiple levels, including biological, psychological, family, community, and cultural levels, that precede and are associated with an outcome. Risk factors are associated with higher likelihood of problem outcomes, and protective factors are associated with lower likelihood of problem outcomes.

Runaway youth means an individual under 18 years of age who absents himself or herself from home or place of legal residence without the permission of a parent or legal guardian.

Runaway and homeless youth project means a community-based program outside the juvenile justice or child welfare systems that provides runaway prevention, outreach, shelter, and transition services to runaway, homeless, or street youth or youth at risk of running away or becoming homeless.

Safe and Appropriate Settings When Exiting Basic Center Program Services or Transitional Living Program Services means settings that reflect achievement of the intended purposes of the Basic Center and Transitional Living programs as outlined in section 382(a) of the Act. Safe and Appropriate Settings When Exiting Basic Center Program Services or Transitional Living Program Services are not exits:

(1) To another shelter;

(2) To the street;

(3) To a private residence, other than a youth who is staying stably with family, if the youth is not paying rent;

(4) To another residential program if the youth is not paying rent or if the youth's transition to the other residential program was unplanned;

(5) To a correctional institute or detention center if the youth became involved in activities that lead to this exit after entering the program;

(6) To an unspecified other living situation; or

(7) To a living situation that is not known.

Screening and assessment means standardized instruments and practices used to validly and reliably identify

each youth's individual strengths and needs across multiple aspects of health, wellbeing and behavior in order to inform appropriate service decisions and provide a baseline for monitoring outcomes over time. Screening involves brief instruments, for example with trauma and health problems, which can indicate certain youth for more thorough diagnostic assessments and service needs. Assessment, which is used here to mean assessment more broadly than for the purposes of diagnosis, involves evaluating multiple aspects of social, emotional, and behavioral competencies and functioning in order to inform service decisions and monitor outcomes.

Service plan or treatment plan means a written plan of action based on the assessment of client needs and strengths and engaging in joint problem solving with the client that identifies problems, sets goals, and describes a strategy for achieving those goals. To the extent possible, the plan should incorporate the use of evidence-based or evidence-informed interventions.

Short-term training means the provision of local, State, or regionally-based instruction to runaway or otherwise homeless youth service providers in skill areas that will directly strengthen service delivery.

Street youth means an individual who is a runaway youth or an indefinitely or intermittently homeless youth who spends a significant amount of time on the street or in other areas that increase the risk to such youth for sexual abuse, sexual exploitation, prostitution, or drug and/or alcohol abuse. For purposes of this definition, youth means an individual who is age 21 or less.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

Supervised apartments means a type of shelter setting using building(s) with separate residential units where client supervision is provided on site or on call 24 hours a day.

Technical assistance means the provision of expertise or support for the purpose of strengthening the capabilities of grantee organizations to deliver services.

Temporary shelter means all shelter settings in which runaway and homeless youth are provided room and board, crisis intervention, and other services on a 24-hour basis for up to 21 days.

■ 3. Revise the Subpart B heading to read as follows:

Subpart B—Runaway and Homeless Youth Program Grants

■ 4. Revise § 1351.10 to read as follows:

§ 1351.10. What is the purpose of Runaway and Homeless Youth Program grants?

The purpose of Runaway and Homeless Youth program grants is to establish or strengthen community-based projects to provide runaway prevention, outreach, shelter, and transition services to runaway, homeless, or street youth or youth at risk of running away or becoming homeless. Youth who have become homeless or who leave and remain away from home without parental permission are disproportionately subject to serious health, behavioral, and emotional problems. They lack sufficient resources to obtain care and may live on the street for extended periods, unable to achieve stable safe living arrangements and at times putting themselves in danger. Many are urgently in need of shelter, which, depending on the type of runaway and homeless youth project, can include host family homes, drop-in centers, congregate care, or supervised apartments, and services, including services that are linguistically appropriate, responsive to their complex social identities (i.e., race, ethnicity, nationality, religion/spirituality, gender identity/expression, sexual orientation, socioeconomic status, physical ability, language, beliefs, values, behavior patterns, or customs), and acknowledge the environment they come from. Runaway and Homeless Youth grant services should take a positive youth development approach that ensures a young person a sense of safety and structure; belonging and membership; self-worth and social contribution; independence and control over one's life; skills to develop plans for the future and set goals; and closeness in interpersonal relationships. To make a successful transition to adulthood, runaway youth, homeless youth, and other street youth also need opportunities to complete high school or earn a general equivalency degree, learn job skills, and obtain employment. HHS operates three programs to carry out these purposes through direct local services: The Basic Center Program; the Transitional Living Program (including Maternity Group Homes); and the Street Outreach Program. HHS operates three additional activities to support achievement of these purposes: Research, evaluation, and service projects; a national communications system to assist runaway and homeless youth in communicating with service

providers; and technical assistance and training.

■ 5. Revise § 1351.11 to read as follows:

§ 1351.11 Who is eligible to apply for a Runaway and Homeless Youth Program grant?

Public (State and local) and private non-profit entities, and coordinated networks of such entities, are eligible to apply for a Runaway and Homeless Youth Program grant unless they are part of the law enforcement structure or the juvenile justice system.

■ 6. Revise § 1351.12 to read as follows:

§ 1351.12 Who gets priority for the award of a Runaway and Homeless Youth Program grant?

In making Runaway and Homeless Youth Program grants to existing grantees, prior experience shall be weighed along with performance; therefore the Secretary or the Secretary's designee gives priority to those public or private agencies that have performed highly in comparison to other agencies receiving grants in past years, both in meeting applicable performance standards and in complying with applicable conditions of grant award or execution required under these regulations or under funding opportunity announcements. In making awards to new applicants or to existing grantees seeking to expand to a new service area, consideration will be given to the likelihood that the applicant or grantee will be able to meet applicable performance standards and other regulatory requirements under this Part or funding opportunity conditions in comparison to the performance of other new applicants or of existing grantees providing the same types of services. The Secretary also gives priority to new or existing Basic Center Program, Transitional Living Program (including Maternity Group Homes), and Street Outreach Program applicants whose total grant requests for services to runaway or otherwise homeless youth are less than \$200,000 and whose project budgets, considering all funding sources, are smaller than \$200,000. These amounts are subject to adjustment in funding opportunity announcements as necessary to reflect inflation.

■ 7. Revise § 1351.13 to read as follows:

§ 1351.13 What are the Federal and non-Federal match requirements under a Runaway and Homeless Youth Program Grant?

The Federal share of the project represents 90 percent of the total project cost supported by the Federal Government. The remaining 10 percent represents the required project match

cost by the grantee. This may be a cash or in-kind contribution.

■ 8. Revise § 1351.15 to read as follows:

§ 1351.15 What costs are supportable under a Runaway and Homeless Youth Program grant?

Costs that can be supported include, but are not limited to, staff training and core services such as outreach, intake, case management, data collection, temporary shelter, transitional living arrangements, referral services, counseling services, and aftercare services. Costs for acquisition and renovation of existing structures may not normally exceed 15 percent of the grant award. HHS may waive this limitation upon written request under special circumstances based on demonstrated need. For grants that support research, evaluation, and service projects; a national communications system to assist runaway and homeless youth in communicating with service providers; and for technical assistance and training grants; costs that can be supported include those enumerated above as well as services such as data collection and analysis, telecommunications services, and preparation and publication of materials in support of the purposes of such grants.

■ 9. Revise § 1351.16 to read as follows:

§ 1351.16 What costs are not allowable under a Runaway and Homeless Youth Program grant?

A Runaway and Homeless Youth Program grant does not cover the (a) capital costs of constructing new facilities, or (b) operating costs of existing community centers or other facilities that are used partially or incidentally for services to runaway or homeless youth clients, except to the extent justified by application of cost allocation methods accepted by HHS as reasonable and appropriate.

■ 10. Revise § 1351.17 to read as follows:

§ 1351.17 How is application made for a Runaway and Homeless Youth Program grant?

HHS publishes periodically over the Internet funding opportunity announcements of grant funds available under the Act for each type of local services grant, and also may publish additional announcements for special projects. The funding opportunity announcements state the amount of funds available, program priorities for funding, and criteria for evaluating applications in awarding grants. The announcements also describe specific procedures for receipt and review of applications. An applicant should:

(a) Obtain a program announcement from the ACF Web site or from the ACYF Operations Center; and

(b) Submit a completed application either electronically to the Grants.gov Web site or to the ACYF Operations Center.

■ 11. Revise § 1351.18 to read as follows:

§ 1351.18 What criteria has HHS established for deciding which Runaway and Homeless Youth Program grant applications to fund?

In reviewing applications for a Runaway and Homeless Youth Program grant, HHS takes into consideration a number of factors, including:

(a) Whether the grant application meets the particular priorities, requirements, standards, or evaluation criteria established in funding opportunity announcements;

(b) A need for Federal support based on the likely number of estimated runaway or otherwise homeless youth in the area in which the runaway and homeless youth project is or will be located exceeding the availability of existing services for such youth in that area;

(c) For runaway and homeless youth centers, whether there is a minimum residential capacity of four (4) and a maximum residential capacity of twenty (20) youth in a single structure (except where the applicant assures that the State where the center or locally controlled facility is located has a State or local law or regulation that requires a higher maximum to comply with licensure requirements for child and youth serving facilities), or within a single floor of a structure in the case of apartment buildings, with a number of staff sufficient to assure adequate supervision and treatment for the number of clients to be served;

(d) Plans for meeting the best interests of the youth involving, when possible, both the youth and the family. The plans also must include methods for assuring the youth's safe return home or to local government officials or law enforcement officials and indicate efforts to provide appropriate alternative living arrangements;

(e) Plans for the delivery of aftercare or counseling services to runaway or otherwise homeless youth and their families;

(f) Whether the estimated cost to HHS for the runaway and homeless youth project is reasonable considering the anticipated results;

(g) Whether the proposed personnel are well qualified and the applicant agency has adequate facilities and resources;

(h) Past performance on a RHY grant, including but not limited to program standards;

(i) Whether the proposed project design, if well executed, is capable of attaining program objectives;

(j) The consistency of the grant application with the provisions of the Act and these regulations; and

(k) Other factors as outlined in funding opportunity announcements.

■ 12. Revise § 1351.19 to read as follows:

§ 1351.19 What additional information should an applicant or grantee have about other Federal requirements for a Runaway and Homeless Youth Program grant?

(a) A number of other rules and regulations apply to applicants and grantees. These include:

(1) 2 CFR Part 182—Government-wide Requirements for Drug Free Workplace;

(2) 2 CFR Part 376—Nonprocurement Debarment and Suspension;

(3) 45 CFR Part 16—Procedures of the Departmental Grant Appeals Board;

(4) 45 CFR Part 30—Claims Collection;

(5) 45 CFR Part 46—Protection of Human Subjects;

(6) 45 CFR Part 74—Uniform Administrative Requirements for Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and Commercial Organizations;

(7) 45 CFR Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964;

(8) 45 CFR Part 81—Practice and Procedure for Hearings Under part 80;

(9) 45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance;

(10) 45 CFR Part 86—Nondiscrimination on the Basis of Sex in Education Programs or Activities receiving Federal Financial Assistance;

(11) 45 CFR Part 87—Equal Treatment for Faith Based Organizations;

(12) 45 CFR Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance;

(13) 45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments; and

(14) 45 CFR Part 93—New Restrictions on Lobbying.

(b) Several program policies regarding confidentiality of information, treatment, conflict of interest and State protection apply to recipients of

Runaway and Homeless Youth Program grants. These include:

(1) *Confidential information.* All information including lists of names, addresses, photographs, and records of evaluation of individuals served by a runaway and homeless youth project shall be confidential and shall not be disclosed or transferred to any individual or to any public or private agency without written consent of the youth and family unless release of information is compelled by a court or statutory mandate. In such cases, the grantee is required to make reasonable attempts to notify the victims affected by the disclosure and to take steps to protect the privacy and safety of the persons affected by the release. Youth served by a runaway and homeless youth project shall have the right to review their records; to correct a record or file a statement of disagreement; and to be apprised of the individuals who have reviewed their records. Procedures shall be established for the training of project staff in the protection of these rights and for the secure storage of records.

(2) *Medical, psychiatric or psychological treatment.* No youth shall be subject to medical, psychiatric or psychological treatment without the consent of the youth and family unless otherwise permitted by State law.

(3) *Conflict of interest.* Employees or individuals participating in a program or project under the Act shall not use their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.

(4) *State law protection.* HHS policies regarding confidential information and experimentation and treatment shall not apply if HHS finds that State law is more protective of the rights of runaway or otherwise homeless youth.

(5) *Non-discriminatory services and training.* Service delivery and staff training must comprehensively address the individual strengths and needs of youth as well as be language appropriate, gender specific (interventions that are sensitive to the diverse experiences of male, female, and transgender youth), and culturally sensitive and respectful of the complex social identities of youth (i.e. race, ethnicity, nationality, religion/spirituality, gender identity/expression, sexual orientation, socioeconomic status, physical ability, language, beliefs, values, behavior patterns, or customs).

(c) Nothing in the Act or these regulations gives the Federal

Government control over the staffing and personnel decisions regarding individuals hired by a runaway and homeless youth project receiving Federal funds.

■ 13. Revise subpart C to read as follows:

Subpart C—Additional Requirements

Sec.

1351.20 What are the additional requirements that apply to all Runaway and Homeless Youth Program local services grants?

1351.21 What are the additional requirements that the Basic Center Program grantees must meet?

1351.22 What are the additional requirements that the Transitional Living Program and Maternity Group Home grantees must meet?

1351.23 What are the additional requirements that the Street Outreach Program grantees must meet?

§ 1351.20 What are the additional requirements that apply to all Runaway and Homeless Youth Program local services grants?

This section applies to the Basic Center Program, the Transitional Living Program, and the Street Outreach Program. To improve the administration of these Runaway and Homeless Youth Programs by increasing the capacity of runaway and homeless youth projects to deliver services, by improving their performance in delivering services, and by providing for the evaluation of performance:

(a) Grantees shall participate in technical assistance, monitoring, and short-term training as a condition of funding, as determined necessary by HHS, in such areas as: Aftercare services or counseling; background checks; core competencies of youth workers, core support services; crisis intervention techniques; cultural and linguistic diversity; development of coordinated networks of private nonprofit agencies and/or public agencies to provide services; ethics and staff safety; fiscal management; low cost community alternatives for runaway or otherwise homeless youth; positive youth development; program management; risk and protective factors related to youth homelessness; screening and assessment practices; shelter facility staff development; special populations (tribal youth; lesbian, gay, bisexual, and transgender youth; youth with disabilities; youth victims of trafficking, sexual exploitation or sexual abuse); trauma and the effects of trauma on youth; use of evidence-based and evidence-informed interventions; and youth and family counseling.

(b) Grantees shall coordinate their activities with the 24-hour National toll-free and Internet communication system, which links runaway and homeless youth projects and other service providers with runaway or otherwise homeless youth, as appropriate to the specific activities provided by the grantee.

(c) Grantees shall submit statistical reports profiling the clients served and providing management and performance information in accordance with guidance provided by HHS.

(d) Grantees shall perform outreach to locate runaway and homeless youth and to coordinate activities with other organizations serving the same or similar client populations.

(e) Grantees shall develop and implement a plan for addressing youth who have run away from foster care placement or correctional institutions, in accordance with Federal, State, or local laws that apply to these situations.

(f) Grantees shall take steps to ensure that youth who are under the legal jurisdiction of the juvenile justice or child welfare systems receive services from those systems until such time as they are released from the jurisdiction of those systems.

(g) Grantees shall develop and implement an aftercare plan, covering at least 6 months, to stay in contact with youth who leave the program in order to ensure their ongoing safety. A youth's individual aftercare plan shall outline what services were provided, including appropriate referrals for needed health care services, the youth's housing status, and the rate of participation and completion of the services in the plan at 3 months and at 6 months after exiting the program.

(h) Grantees shall develop and implement a plan for health care services referrals for youth during the service and aftercare periods.

(i) Grantees shall assist youth to stay connected with their schools or to obtain appropriate educational services. This includes coordination with McKinney-Vento school district liaisons, designated under the McKinney-Vento Homeless Assistance Act, to assure that runaway and homeless youth are provided information about the services available under that Act.

(j) Basic Center Program, Transitional Living Program, and Street Outreach grantees shall develop and document plans that address steps to be taken in case of a local or national situation that poses risk to the health and safety of staff and youth. Emergency preparedness plans should, at a minimum, include routine preventative

maintenance of facilities as well as preparedness, response, and recovery efforts. The plan should contain strategies for addressing evacuation, security, food, medical supplies, and notification of youths' families, as appropriate. In the event of an evacuation due to specific facility issues, such as a fire, loss of utilities, or mandatory evacuation by the local authorities, an alternative location needs to be designated and included in the plan. Grantees must immediately provide notification to their project officer and grants officer when evacuation plans are executed.

(k) Grantees shall ensure that all shelters that they operate are licensed where that is required, and determine that any shelters to which they regularly refer clients have evidence of current licensure if licensure is applicable to shelters of that type. For grantee-operated facilities, failure to meet any applicable State or local legal requirements as a condition of operation may be grounds for grant termination.

(l) Grantees shall conduct complete background checks on all employees and volunteers. Grantees shall also conduct criminal and child abuse checks for all host homes.

(m) Grantees shall utilize and integrate into the operation of their projects the principles of positive youth development, including healthy messages, safe and structured places, adult role models, skill development, and opportunities to serve others.

(n) Grantees shall provide such other services and meet such additional requirements as HHS determines are necessary to carry out the purposes of the statute, as appropriate to the services and activities for which they are funded. These services and requirements are articulated in the funding opportunity announcements and other instructions issued by the Secretary or secretarial designees. This includes operational instructions and standards of execution determined by the Secretary or secretarial designees to be necessary to properly perform or document meeting the requirements applicable to particular programs or projects.

§ 1351.21 What are the additional requirements that the Basic Center Program grantees must meet?

(a) Grantees shall have an intake procedure that is available 24 hours a day and 7 days a week to all youth seeking services and temporary shelter that addresses and responds to immediate needs for crisis counseling, food, clothing, shelter, and health care services.

(b) Grantees shall provide, either directly or through arrangements, access to temporary shelter 24 hours a day and 7 days a week.

(c) Grantees shall provide case management, counseling and referral services that meet client needs and that encourage, when in the best interests of the youth particularly with regard to safety, the involvement of parents or legal guardians.

(d) Grantees shall provide additional core support services to clients both residentially and non-residentially as appropriate. The core services must include case planning, skill building, recreation and leisure activities, and aftercare.

(e) Grantees shall contact the parent(s), legal guardian or other relatives of each client within 72 hours of the youth entering the program to inform them that the youth is safe. The grantee should determine on a case-by-case basis if it is in the best interests of the youth to notify the parent(s) or legal guardian of the location of the youth until further information has been gathered to assure safety.

(f) Additional requirements included in the funding opportunity announcement (FOA).

§ 1351.22 What are the additional requirements that the Transitional Living Program and Maternity Group Home grantees must meet?

(a) Grantees shall provide transitional living arrangements and additional core services including case planning/management, counseling, skill building, consumer education, referral to needed social and health care services, and education, recreation and leisure activities, aftercare and, as appropriate to grantees providing maternity-related services, parenting skills, child care, and child nutrition.

(b) Additional requirements included in the funding opportunity announcement (FOA).

§ 1351.23 What are the additional requirements that the Street Outreach Program grantees must meet?

(a) Grantees shall provide services that are designed to assist clients in leaving the streets, making healthy choices, and building trusting relationships in areas where targeted youth congregate.

(b) Grantees shall directly or by referral provide treatment, counseling, prevention, and education services to clients as well as referral for emergency shelter.

(c) Additional requirements included in the funding opportunity announcement (FOA).

■ 14. Add Subpart D to read as follows:

Subpart D—What Are the Runaway and Homeless Youth Program-Specific Standards?

Sec.

1351.30 What performance standards must Basic Center grantees meet?

1351.31 What performance standards must Transitional Living Programs (TLP), including Maternity Group Homes (MGH), meet?

1351.32 What performance standards must Street Outreach Programs (SOP) meet?

1351.33 How and when will performance standards for the Runaway and Homeless Youth Program be revised?

1351.34 When are program-specific requirements effective?

§ 1351.30 What performance standards must Basic Center grantees meet?

What are the minimum performance standards that Basic Center grantees must achieve to receive and maintain funding?

(a) Grantees must contact the parent(s), legal guardian or other relatives of each client within 72 hours of the youth entering the program to inform them that the youth is safe. The grantee should determine on a case-by-case basis if it is in the best interests of the youth to notify the parent(s) or legal guardian of the location of the youth until further information has been gathered to assure safety.

(b) Grantees shall maintain at 90 percent or higher the proportion of youth transitioning to safe and appropriate settings when exiting Basic Center Program services.

(c) Grantees shall ensure that youth receive counseling services that match the individual needs of each participant. Data shall be reported by each grantee on the type of counseling each youth received (individual, family and/or group counseling), the participation rate based on a youth's service plan or treatment plan, and the completion rate based on a youth's service plan or treatment plan, where applicable.

(d) Grantees that choose to provide street-based services, home-based services, drug and/or alcohol abuse education and prevention services, and/or testing for sexually transmitted diseases (at the request of the youth) shall ensure youth receive the appropriate services. Data shall be reported on the completion rate for each service provided based on the youth's service or treatment plan.

§ 1351.31 What performance standards must Transitional Living Programs (TLP), including Maternity Group Homes (MGH), meet?

What are the minimum performance standards that TLP and MGH grantees

must achieve to receive and maintain funding?

(a) Grantees shall maintain at 90 percent or higher the proportion of youth transitioning to safe and appropriate settings when exiting Transitional Living Program services.

(b) Grantees shall maintain at 45 percent or higher the proportion of youth who are engaged in community service and service learning activities while in the program.

(c) Grantees shall ensure youth are engaged in educational advancement, job attainment skills or work activities while in the program.

(d) Grantees shall ensure and report that youth receive health care services as determined within their health care referral plan.

(e) MGH grantees shall ensure and report that youth receive consistent pre-natal care, well-baby exams, and immunizations for the infant while in the program.

§ 1351.32 What performance standards must Street Outreach Programs (SOP) meet?

What are the minimum performance standards that SOP grantees must achieve to receive and maintain funding? Grantees shall contact youth who are or who are at risk of homeless or runaway status on the streets, in numbers that are reasonably attainable for the staff size of the project. Grantees with larger staffs will be expected to contact larger numbers of youth in approximate proportion, as determined by HHS, to the larger number of staff available to provide this service.

§ 1351.33 How and when will performance standards for the Runaway and Homeless Youth Program be revised?

(a) Current and future performance standards for grantees will be related to one or more of the following four core outcomes:

- (1) Social and Emotional Well-being;
- (2) Permanent Connections;
- (3) Education or Employment; and/or
- (4) Stable Housing.

(b) The Secretary may, based upon available program data, add, amend, or suspend benchmark levels for current

and future performance standards for grantees. The specific benchmark levels in §§ 1351.30, 1351.31, and 1351.32 may be amended per this section.

(c) The Secretary may, based upon available program data, add, amend or suspend performance standards for grantees that relate to one or more of the four core outcomes in paragraph (a) of this section.

(d) Notification to grantees shall be given in advance of any revision to either program standards or benchmark levels through a public notification mechanism such as a funding opportunity announcement, policy guidance or other appropriate mechanism.

§ 1351.34 When are program-specific requirements effective?

Grantees shall meet program specific requirements as applicable upon the effective date of those requirements, or starting at the beginning of the next budget period for the grant, whichever comes later.

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Department of Agriculture

Commodity Credit Corporation

7 CFR Parts 1400 and 1416

Supplemental Agricultural Disaster Assistance Programs, Payment
Limitations, and Payment Eligibility; Final Rule

DEPARTMENT OF AGRICULTURE**Commodity Credit Corporation****7 CFR Parts 1400 and 1416**

RIN 0560-AI21

Supplemental Agricultural Disaster Assistance Programs, Payment Limitations, and Payment Eligibility

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements specific requirements for the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP), Livestock Forage Disaster Program (LFP), Livestock Indemnity Program (LIP), Tree Assistance Program (TAP), and general provisions for Supplemental Agricultural Disaster Assistance Programs authorized by the Agricultural Act of 2014 (2014 Farm Bill). Although there were similar disaster programs under the 2008 Farm Bill, the authority for those programs has expired. The 2014 Farm Bill reauthorizes these programs and they are similar to the 2008 programs, however, there are distinct changes in payment limits, eligible losses, and eligible causes of loss from prior programs. Eligible ELAP, LFP, LIP, and TAP losses must have occurred on or after October 1, 2011 to be eligible for payment. This rule specifies how ELAP, LFP, LIP, and TAP payments are calculated, what losses are eligible, and when producers may apply for payments. Additionally, this final rule implements changes required by the 2014 Farm Bill by amending the regulations that specify maximum income limits (payment eligibility) and maximum benefit amounts (payment limits) for participants in programs funded by the Commodity Credit Corporation (CCC) and some FSA programs. The intended effect of the eligibility requirements is to ensure that program payments and benefits are issued only to those persons and legal entities that meet the income eligibility requirements as specified in the 2014 Farm Bill, and that program participants do not receive any program payments above the maximum allowable payment amount. The payment limits and average Adjusted Gross Income (AGI) limits in this final rule apply to 2014 and subsequent crop, program, or fiscal year benefits, and to benefits for programs that were authorized by the 2014 Farm Bill for retroactive 2012 or 2013 crop, program, or fiscal year benefits.

DATES: *Effective Date:* April 14, 2014.

FOR FURTHER INFORMATION CONTACT: For general provisions for Supplemental Agricultural Disaster Assistance Programs, LFP, and LIP: Scotty Abbott; telephone (202) 720-7997. For ELAP: Amy Mitchell; telephone (202) 720-8954. For TAP: Steve Peterson; telephone: (202) 720-7641. For Payment Limits and Payment Eligibility: James Baxa; telephone: (202) 720-4189.

SUPPLEMENTARY INFORMATION:**Background***Disaster Assistance Programs, Payment Limits, and Payment Eligibility*

The disaster assistance programs, payment limits, and payment eligibility provisions in this rule are CCC programs and provisions; the Farm Service Agency (FSA) administers the programs and provisions for CCC.

Supplemental Agricultural Disaster Assistance Programs

This final rule implements the general eligibility provisions and specific requirements for supplemental agricultural disaster assistance programs authorized by Section 1501 of the 2014 Farm Bill (Pub. L. 113-79). Section 1501 authorizes the Secretary of Agriculture to assist producers through four different disaster programs:

- ELAP,
- LFP,
- LIP (referred to as Livestock Indemnity Payments in the 2014 Farm Bill), and
- TAP.

ELAP provides emergency assistance to eligible producers of livestock, honeybees, and farm-raised fish that have losses due to adverse weather, or other conditions, including losses due to blizzards, disease (including cattle tick fever), water shortages, and wildfires, as determined by the Secretary. ELAP assistance is for losses not covered under LFP or LIP.

LFP provides payments to eligible livestock producers that have suffered livestock grazing losses due to qualifying drought or fire. For drought, the losses must have occurred due to a qualifying drought during the normal grazing period for the county on land that is native or improved pastureland with permanent vegetative cover or is planted to a crop planted specifically for grazing covered livestock. LFP also provides payments to eligible livestock producers that have suffered grazing losses on rangeland managed by a Federal agency if the eligible livestock producer is prohibited by the Federal agency from grazing the normally

permitted livestock on the managed rangeland due to a qualifying fire.

LIP provides disaster assistance to livestock owners and contract growers that had losses due to livestock deaths in excess of normal mortality due to adverse weather during the calendar year, the 2014 Farm Bill includes hurricanes, floods, blizzards, disease, wildfires, extreme heat, and extreme cold as “weather.” To use the terms in the normal sense, in this rule, we will refer to “weather or other conditions” and these will include the same list as the 2014 Farm Bill includes as “weather.” LIP also provides assistance to livestock owners and contract growers that had losses due to livestock deaths in excess of normal mortality due to attacks by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators.

TAP provides disaster assistance to eligible orchardists and nursery tree growers to replant or rehabilitate trees, bushes, and vines that were lost due to natural disaster. Orchardists and nursery tree growers who commercially raise trees, bushes, and vines for which there were mortality losses in excess of 15 percent, after adjustment for normal mortality, are eligible for TAP payments.

With the authorization provided in the 2014 Farm Bill, these disaster assistance programs are permanent or “standing” programs; that is, they are continuing programs not subject to annual appropriations. ELAP, LFP, LIP, and TAP were previously authorized under the 2008 Farm Bill (the Food, Conservation, and Energy Act of 2008, Pub. L. 110-246), however, these programs expired. The 2014 Farm Bill authorizes ELAP, LFP, LIP, and TAP disaster programs and while they are similar to those programs authorized by the 2008 Farm Bill, the newly authorized programs have minor changes from those previously authorized programs. In addition, the 2014 Farm Bill authorizes retroactive payments under these programs for losses in FY 2012 and 2013. The 2014 Farm Bill did not reauthorize the Supplemental Revenue Assistance Payments Program (SURE), which was previously authorized by the 2008 Farm Bill and has expired.

Under the 2008 Farm Bill, payments for ELAP, LFP, LIP, and TAP were made from the funds of the Agricultural Disaster Relief Trust Fund established under section 902 of the Trade Act of 1974. Under the 2014 Farm Bill, payments will be made from CCC funds. Due to this change in funding source, this rule moves the regulations for the

four disaster assistance programs out of 7 CFR chapter VII, which covers FSA programs, and into 7 CFR chapter XIV, which covers CCC programs. The main scope of these programs is, however, unchanged, and that is why the regulations that were located 7 CFR chapter VII for the disaster programs previously authorized by the 2008 Farm Bill are being used as the basis for the regulations located in 7 CFR chapter XIV, subject to changes made by the 2014 Farm Bill.

Terms Used in This Rule

The terms used in the existing CFR for these programs have not changed. This final rule uses the words “producers” and “participants” in substantive ways. “Producers” may apply for ELAP, LFP, LIP, and TAP. “Participants” are those “producers” who apply for payments under the programs and who must meet the requirements to be eligible to receive ELAP, LFP, LIP, and TAP payments.

Section 1501 of the 2014 Farm Bill uses the words “assistance,” “benefits,” “compensation,” “relief,” and “payments.” The payment for the ELAP, LFP, LIP, and TAP assistance, benefit, relief, or compensation for eligible producers is calculated as specified in this rule.

For LFP, section 1501 of the 2014 Farm Bill and this rule include the terms “eligible livestock producer,” “covered livestock,” and “qualifying drought or fire.” This rule also uses the terms “qualifying grazing loss” and “qualifying grazing land.” For TAP, section 1501 of the 2014 Farm Bill and this rule include the terms “eligible orchardist” and “nursery tree grower.” These terms have not changed.

General Eligibility Requirements for Disaster Assistance Programs

As specified in the 2014 Farm Bill and in this rule, the total amount of payments that a person or legal entity can receive, directly or indirectly, in any crop year cannot exceed \$125,000 for LIP, LFP, and ELAP; TAP has a separate payment limit of \$125,000 per person or legal entity for any crop year. Under the 2008 Farm Bill, payments under LIP, LFP, ELAP, and SURE were limited to \$100,000 total per person or legal entity per year and TAP benefits were limited to \$100,000 per person or legal entity per year.

The 2014 Farm Bill and this rule specify that a person or legal entity is ineligible for payments if the person’s or legal entity’s average AGI for the applicable benefit year is in excess of \$900,000. This single AGI limit replaces the multiple limits for farm and non-farm income, and the separate limit for

conservation programs, that were required by the 2008 Farm Bill. Therefore this rule removes the references to farm versus non farm income, and the separate limit for conservation programs, from the CFR. Under the 2008 Farm Bill, the average AGI limit for payment eligibility was \$500,000 in non-farm income and \$750,000 in farm income, with a separate limit of \$1 million in nonfarm income for conservation program eligibility.

This rule revises 7 CFR part 1400 to implement the payment limit and AGI regulations specified in the 2014 Farm Bill. (More details on the payment limit and AGI limit changes that apply generally to all CCC-funded programs are provided later in this document.)

Previous Risk Management Purchase Requirement

The 2014 Farm Bill removes the risk management purchase requirement for all the disaster assistance programs. The 2008 Farm Bill required that producers obtain a Risk Management Agency (RMA) policy or plan of insurance or Noninsured Crop Disaster Assistance Program (NAP) coverage for all crops on the producer’s farm for which the producer had an interest as a condition of payment eligibility for ELAP, LFP, and TAP. For losses occurring on or after October 1, 2011, participants are not required to have an RMA policy or plan of insurance or NAP coverage for any of their crops to be eligible for benefits under ELAP, LFP, LIP, or TAP.

Other General Provisions That Apply to Disaster Assistance Programs

This rule moves the existing regulations for the general provisions for disaster programs authorized by the 2008 Farm Bill in 7 CFR part 760, subpart B, to 7 CFR part 1416, subpart A, and amends those regulations as required by the 2014 Farm Bill. This rule changes some of the documentation requirements needed to support losses. These discretionary changes recognize the difficulty that producers may face and the need for flexibility regarding documentation, while at the same time recognizing FSA’s need to ensure that participants meet all eligibility requirements specified in the 2014 Farm Bill. For losses on or after October 1, 2011, this rule clarifies that, because FSA must monitor both payment limitation and AGI compliance, as well as specific program eligibility requirements, participants must provide or have on file a farm operating plan for the applicable year to be eligible for payments under ELAP, LFP, LIP, or TAP.

This rule does not change the requirement that participants receiving ELAP, LFP, LIP, and TAP payments must keep records and documentation that support the request for payment under these programs for 3 years following the end of the year in which the application for payment was filed. That recordkeeping requirement is consistent with other FSA rules and programs, as well as with previous similar disaster assistance programs. This final rule changes the requirements for documentation of losses under ELAP, LFP, and LIP, which are discussed in more detail in this document under the supplementary information for each of those programs. For example, for ELAP, if verifiable or reliable records are not available or provided, FSA may now accept producer’s certification of eligible losses if similar producers have comparable eligible losses, as determined by FSA.

As specified in this rule in 7 CFR part 1416 subpart A, other restrictions and compliance requirements that applied under the 2008 Farm Bill will continue to apply to ELAP, LFP, LIP, and TAP under the 2014 Farm Bill including, but not limited to, those pertaining to highly erodible land and wetland conservation provisions specified in 7 CFR part 12. These are not new requirements.

All producers applying for benefits under ELAP, LFP, LIP, and TAP must meet the eligibility requirements provided in this rule; false certifications can carry serious consequences (for example, a reduction or denial of benefits). FSA will validate applications with random spot-checks.

Specific Provisions for ELAP

This rule moves the existing regulations for ELAP in 7 CFR part 760, subpart C, to 7 CFR part 1416, subpart B, and amends those regulations as required by the 2014 Farm Bill.

Section 1501 of the 2014 Farm Bill directs the Secretary to use up to \$20 million per fiscal year from CCC funds to provide emergency relief to eligible producers of livestock, honeybees, and farm-raised fish. The 2008 Farm Bill provided \$50 million per year for ELAP. ELAP is intended to provide financial assistance to eligible producers to assist in the reduction of losses due to disease (including cattle tick fever), adverse weather, such as blizzards, or other conditions, such as wildfires as determined by the Secretary. The 2014 Farm Bill added cattle tick fever eligibility. ELAP covers losses that are not covered under LFP or LIP. Determination of ELAP payment eligibility will be based on actual losses as determined by the Deputy

Administrator for Farm Programs (Deputy Administrator) due to eligible adverse weather or other eligible loss conditions.

Funding for ELAP is authorized by fiscal year; therefore, the program year is based on the fiscal year. This is a change from the previous ELAP program year, which was based on a calendar year.

Payments will be made after the sign-up deadline for a program year once all applications have been received. Benefits are subject to the availability of funds and may be prorated if the total amount of benefits applied for exceeds \$20 million for a program year. If the total amount requested by all eligible producers for that program year would result in less than \$20 million paid based on the applicable minimum payment rate for each category of losses, as specified in these regulations, then the payment rate may also be increased to a maximum of 80 percent of costs, as determined by the Deputy Administrator. Since ELAP was initially authorized by the 2008 Farm Bill, ELAP claims have never exceeded the annual funding limit.

Eligibility Requirements for ELAP

Under this rule, ELAP will continue to provide assistance for losses due to disease, adverse weather, or other conditions, such as blizzards and wildfires as determined by the Secretary. In general, adverse weather includes, but is not limited to, hurricanes, floods, blizzards, wildfires, extreme heat, and extreme cold. This rule clarifies that “eligible adverse weather” means a damaging weather event that is not expected to occur during the loss period which results in losses. In general, adverse weather or other qualifying conditions, as determined by the Deputy Administrator, are conditions that cause damage that result in a financial loss to the producer or require the producer to incur additional expenses. ELAP is intended to provide broad coverage for losses not covered by other programs. As under the previous ELAP provisions, additional eligible adverse weather and other qualifying loss conditions will be specified, as needed, by the Deputy Administrator.

Under the previous ELAP provisions, only bait and game fish were considered eligible farm-raised fish for death losses. However, this rule provides the Deputy Administrator discretion to include other aquatic species as eligible for death losses.

Under this rule, ELAP continues to provide assistance for livestock grazing, feed, and death losses; honeybee feed,

colony, and hive losses; and fish feed and death losses. For livestock feed losses, this rule clarifies that to be eligible for ELAP, the cost incurred for providing or transporting livestock feed to eligible livestock due to an eligible adverse weather or eligible loss condition must occur in combination with an eligible loss of purchased forage or feedstuffs, of mechanically harvested forage or feedstuffs, or from the additional cost of purchasing additional livestock feed, above normal quantities, required to maintain the eligible livestock during an eligible adverse weather or eligible loss condition, until additional livestock feed becomes available.

The 2014 Farm Bill requires that ELAP funds “be used to reduce losses covered by feed or water shortages . . .” Therefore, beginning with the 2014 program year, the costs of providing and transporting water due to an eligible drought will also be covered under ELAP. Although in the past some producers who have incurred expenses for transporting water have received compensation from the Emergency Conservation Program (ECP), this discretionary change to cover these costs under ELAP will allow FSA to provide more effective and timely assistance for producers suffering eligible losses for the additional costs of transporting water. Participants may not receive funds from both ELAP and ECP for the same costs. Only the additional costs associated with transporting the water are eligible for payment; the cost of the water itself is not covered under ELAP. The producer must have had adequate livestock watering systems or facilities prior to the eligible adverse weather or loss condition and normally not need to transport water to the grazing land. In addition, the livestock must be on eligible grazing lands physically located in the county where the eligible adverse weather or eligible loss condition occurred.

While losses due to disease were already covered under the previous ELAP regulations, the 2014 Farm Bill specifically adds cattle tick fever as a covered disease. As a result, ELAP will cover losses due to the cost of gathering cattle for treatment of cattle tick fever occurring on or after October 1, 2011.

Applying for ELAP Payment

As under the previous ELAP regulations, a producer must file both a notice for loss and an application for payment to obtain ELAP benefits. For losses in program years 2012 and 2013, producers must file a notice of loss for each program year no later than August 1, 2014. For losses that occur in program

year 2014, producers must file a notice of loss no later than November 1, 2014. For losses that occur in program year 2015 and subsequently, the participant must provide a notice of loss within the earlier of 30 calendar days of when the loss occurred or November 1 following the program year for which benefits are being requested. The program year, as noted earlier, is now the fiscal year. This means, for example, the deadline for the 2015 program year would be November 1, 2015.

For the 2012 and 2013 program years, producers must file an application for payment for each program year no later than August 1, 2014. For 2014 and subsequent program years, producers must file an application for payment no later than November 1 of the year following the program year for which benefits are being requested. The application for payment may be filed at the same time as the notice of loss, but does not have to be filed at the same time.

As under the previous ELAP provisions for grazing losses, a participant with grazing losses that occur during the 2012, 2013, or 2014 program years must certify to the number of days that grazing was lost due to an eligible adverse weather or loss condition. However, a participant with grazing losses that occur in 2015 and subsequent program years must also provide acceptable verifiable or reliable records that additional feed was fed to sustain livestock during an eligible adverse weather or eligible loss condition, or the livestock were removed from the eligible grazing land where the grazing loss occurred. If verifiable or reliable records of additional feed or livestock removal are not available or provided, FSA may accept the producer’s certification of grazing losses if similar producers have comparable grazing losses, as determined by FSA; for 2012, 2013 and 2014 program years, in addition to the producer certification, the producer must provide the normally required documentation for proof of eligibility, which includes, at a minimum, a farm operating plan, proof of the adverse weather event, an AD-1026, and an acreage report. If the producer certifies grazing losses without providing verifiable or reliable records of having moved the livestock or fed the livestock additional feed, then the County committee will review and act on the certification. The provision to accept a producer certification if verifiable or reliable records are not available is new. A similar provision previously applied to documentation losses for eligible livestock feed, honeybee colony,

honeybee hive, honeybee feed, farm-raised fish feed and farm-raised fish death losses. As under the previous ELAP regulation, participants with eligible livestock death losses must provide proof of death and livestock inventory, as required under the LIP.

ELAP Payment Calculations

This rule increases the payment rate for honeybee colony and hive losses, fish deaths, and livestock deaths. The payment rate is a discretionary provision that is not specified in the 2014 Farm Bill. Under the provisions implementing the 2008 Farm Bill, ELAP payments were calculated using a payment rate of 60 percent. Under this rule, the payment rate may vary, and will be a minimum of 60 percent for livestock, fish, and honeybee feed losses, and 75 percent for honeybee colony and hive losses, fish deaths, and livestock deaths. The payment rate may be increased, as determined by the Deputy Administrator, to provide additional assistance to producers if total requests for payments in a program year are less than \$20 million, however, the cap for the payment rate will be 80 percent (maximum). The payment rate will be adjusted as needed based on the total requests for payments and other factors. In some years, the payment rate may be decreased and in other years, the payment rate may be increased. For socially disadvantaged, limited resource, and beginning farmers, the payment rate will be 90 percent for all losses under ELAP, independent of funding constraints; this is a discretionary change, which allows CCC to provide additional assistance to producers when funding is available. If approval of all eligible applications in a program year would result in expenditures in excess of the amount available for that program year, FSA will prorate the available funds by a national factor to reduce the total expected payments to the amount available for the program year. As noted earlier, the funding level cap under the 2014 Farm Bill is \$20 million per program (fiscal) year. Since ELAP was initially authorized by the 2008 Farm Bill, ELAP payments have never exceeded the annual funding limit.

This rule does not change the payment calculation for other types of losses previously covered under ELAP. For livestock feed losses, ELAP payments will continue to be based on producers' actual costs. This rule also does not change the calculation for payments due to grazing losses, but it does increase the maximum number of days for which payment may be received from 90 days to 150 days in the

case of grazing losses not caused by wildfires on non-Federal land and for livestock feed losses. This change is not required by the Farm Bill; it is a discretionary change to make grazing loss benefits consistent between ELAP and LFP.

For costs associated with transporting water, ELAP payments will be based on the lesser of the total value of the cost to transport water for 150 days based on the daily water requirements of the eligible livestock, or on the total value of the cost to transport the water to eligible livestock for the program year based on the actual number of gallons transported by the producer in the program year. To determine the daily water requirements of eligible livestock, the number of eligible livestock will be converted to an animal unit basis and multiplied by the gallons of water required per animal unit for maintenance for one day, as determined by the Deputy Administrator. Both calculations will determine the value using the national average price per gallon to transport water adjusted, if appropriate, for local or regional conditions rather than the actual costs paid by a producer. The national average price per gallon will be determined by the Deputy Administrator. The default rate, as specified in this rule, is \$0.04 (4 cents) per gallon.

ELAP payments for losses due to the costs of gathering cattle for treatment due to cattle tick fever will be calculated based upon the actual number of livestock that receive treatment times the average cost per head to gather the cattle, as determined by the Deputy Administrator, subject to the payment rate. The number of animals and treatments reported by a producer will be subject to verification based on treatment records provided to FSA by the Animal and Plant Health Inspection Service (APHIS).

This rule changes the payment calculation for eligible farm-raised fish death losses to take into account normal mortality of fish during the program year, based on a normal mortality rate established by FSA. Fish death losses due to normal mortality are not eligible for fish death loss benefits.

While some payment rates have been adjusted, this rule does not change how payments are calculated for payments due to livestock deaths, honeybee colonies, and honeybee hives.

Specific Provisions for LFP

This rule moves the existing regulations for LFP in 7 CFR part 760, subpart D, to 7 CFR part 1416, subpart C. The 2014 Farm Bill has not changed

the basic scope of LFP. Section 1501(c)(2) of the 2014 Farm Bill directs the Secretary to use such sums as are necessary from CCC to compensate eligible livestock producers for eligible grazing losses on eligible grazing land for covered livestock due to a qualifying drought during the normal grazing period for the county, or grazing losses on rangeland managed by a Federal agency if the eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a qualifying fire, as determined by the Secretary, during the calendar year. The qualifying drought or fire must occur on or after October 1, 2011. The payment formulas for LFP in the 2014 Farm Bill will, in some cases, provide larger payments than under the 2008 Farm Bill for producers in areas of drought for multiple weeks.

Eligibility Requirements

LFP payments and eligibilities will be calculated based on the type of covered livestock and grazing losses, and the calculations will be made by FSA-approved categories. This rule does not change the regulation that specifies covered livestock or eligible producers. As under the previous LFP regulation, reduced payments are available for producers who sold or otherwise disposed of covered livestock due to qualifying drought in 1 or both of the 2 production years immediately preceding the current production year. Where the livestock is in the possession of a contract grower at the time of loss, only the contract grower will be eligible for payment. "Contract growers" under ELAP and LFP only includes producers whose income is dependent on the actual weight gain and survival of the livestock. Livestock that were or would have been in a feedlot are not eligible for LFP. The actual "owner" of the livestock will not be eligible. This is not a change from the existing regulations.

Livestock used for recreational use, such as animals used for roping or pets, are not covered. Animals that were or would have been in a feedlot on the beginning date of the drought or fire are not covered. Yaks and ostriches are not covered. Cattle (including buffalo and beefalo) under 500 pounds on the beginning date of the qualifying drought or fire are not covered. These provisions are not new, and have not changed.

Qualifying drought ratings are specified in this rule using the U.S. Drought Monitor (<http://droughtmonitor.unl.edu>) ratings of drought intensity. For any eligible areas of the United States (including territories and possessions) without U.S.

Drought Monitor coverage for an applicable program year, the Deputy Administrator, in consultation with appropriate weather-related agencies and experts, will establish procedures for rating drought intensity using the same basic categories as the U.S. Drought Monitor such that coverage will be made available. As under the 2008 Farm Bill, drought intensity is specified as one of the eligibility “triggers” for LFP; however, the 2014 Farm Bill changes the payment amount an eligible producer may receive based on the length and intensity of the qualifying drought as follows:

- For an amount equal to 1 monthly payment, the drought length and intensity must be at least a D2 (severe drought) intensity in any area of the county for 8 consecutive weeks during the normal grazing period for the specific type of grazing land or pastureland for the county.

- For an amount equal to 3 monthly payments, the drought length and intensity must be at least a D3 (extreme drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland.

- For an amount equal to 4 monthly payments, the drought length and intensity must be:

- At least D3 (extreme drought) intensity in any area of the county for at least four weeks during the normal grazing period for the specific type of grazing land or pastureland for the county, or

- D4 (exceptional drought) intensity in any area of the county at any time during the normal grazing period for the specific grazing land or pastureland for the county.

- For an amount equal to 5 monthly payments, the drought length and intensity must be at least D4 (exceptional drought) in any area of the county for at least 4 weeks (not required to be consecutive weeks) during the normal grazing period for the county.

Under the 2008 Farm Bill, LFP provided a maximum of 3 monthly payments. These new provisions for up to 5 monthly payments are as specified in the 2014 Farm Bill and FSA has no discretion to determine otherwise. Total LFP payments to an eligible livestock producer in a calendar year for eligible grazing losses due to a qualifying drought will not exceed an amount equal to 5 monthly payments for the same livestock.

This rule clarifies that for grazing losses on land planted to a crop specifically for the purpose of providing grazing for covered livestock to be eligible for payment, grazing must be

reported as the intended use on the producer’s acreage report. If the land is reported as another intended use but later grazed, losses due to drought on that land will not be covered by LFP. The rule also clarifies that crops planted specifically for the purpose of providing grazing for covered livestock include forage sorghum or small grains may be covered, but corn stalks or grain sorghum stalks will not be covered. This rule also adds the provision that grazing losses that occur on irrigated land are not covered under LFP unless the irrigated land has not been irrigated in the year for which benefits are being requested due to lack of water that is beyond the participant’s control.

A livestock producer may receive LFP payments for a qualifying fire if the grazing loss occurs on rangeland managed by a Federal agency and the eligible livestock producer is prohibited from grazing the normal permitted livestock on the rangeland due to fire. Under this rule, LFP will continue to cover up to 180 days of grazing losses due to fire.

Any owner, cash or share lessee, or contract grower of livestock that rents or leases pastureland or grazing land owned by another person on a rate-of-gain basis is not considered an eligible livestock producer.

As under the previous LFP provisions, grazing losses that are not related to qualifying drought or fire, as determined by the Secretary, are not eligible for LFP, but may be eligible for ELAP, which covers other adverse weather conditions. An eligible livestock producer may not receive LFP payments for grazing losses due to drought that occur on land used for haying or grazing under the Conservation Reserve Program (CRP).

Applying for LFP Payment

For losses occurring on or after October 1, 2011, and on or before December 31, 2014, the producer must provide a completed application for payment and supporting documentation to the administrative FSA county office by January 30, 2015.

For the 2015 calendar year and subsequent years, the producer must provide a completed application for payment and required supporting documentation to the administrative FSA county office (physical location county) within 30 calendar days after the end of the calendar year in which the grazing loss occurred.

LFP Payment Calculation

Producers are eligible for up to 5 monthly payments for grazing losses due to a qualifying drought, depending

on the intensity and duration of the drought, as described earlier. This rule does not change the basic payment calculations for LFP, although it does provide payments for more months, under certain scenarios, than under the 2008 Farm Bill. Each monthly payment for eligible grazing losses under LFP due to drought may not exceed 60 percent of the lesser of:

- The monthly feed cost for all covered livestock owned or leased by the eligible livestock producer as calculated in § 1416.207(h) or

- The monthly feed cost calculated using the normal carrying capacity of the eligible grazing land of the eligible livestock producer as determined in § 1416.207(l).

In the case of livestock that were sold or otherwise disposed of due to qualifying drought in 1 or both of the 2 production years immediately preceding the current production year, the payment rate is 80 percent of the monthly rate just described.

Under this rule, producers will continue to be eligible for payments for grazing losses due to qualifying fire for up to 180 days per calendar year of such losses. Payments for eligible grazing losses due to qualifying fire under LFP may not exceed 50 percent of the monthly feed cost, determined as specified in § 1416.207(h), for the total number of livestock covered by the Federal lease of the eligible livestock producer for grazing losses that occur for not more than 180 days per calendar year. Payment for fire losses is calculated on a daily basis.

Specific Provisions for LIP

This rule moves the existing regulations for LIP in 7 CFR part 760, subpart E, to 7 CFR part 1416, subpart D. The 2014 Farm Bill authorizes the LIP, with little changes from the previous LIP under the 2008 Farm Bill. The only substantive change required by the 2014 Farm Bill is the addition of eligible losses due to Federally re-introduced predators or species protected by Federal law, including avian predators and wolves. This rule also makes discretionary changes to the documentation requirements, particularly for losses in 2012 and 2013, and for calf and lamb open range livestock operation losses.

Unchanged from the 2008 Farm Bill, the 2014 Farm Bill provisions require LIP payments to be made at a rate of 75 percent of the market value of the livestock on the day before the date of the death of the livestock. Payments are to be made to eligible producers on farms that have incurred livestock death

losses for the calendar year in excess of the normal mortality.

The eligible livestock death losses must have occurred on or after October 1, 2011, during the calendar year for which benefits are requested. Eligible losses must be due to adverse weather or other conditions, as determined by the Secretary, including hurricanes, floods, blizzards, disease exacerbated by adverse weather, wildfires, extreme heat, and extreme cold, or due to attacks by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators. The provisions described in this paragraph are mandatory provisions over which FSA has little or no discretion in how to implement.

Eligibility Requirements for LIP

Under the 2014 Farm Bill, LIP continues to cover losses due to livestock deaths in excess of normal mortality due to hurricanes, floods, blizzards, disease exacerbated by adverse weather, wildfires, extreme heat, and extreme cold. It also expands eligibility under LIP to cover losses from livestock deaths in excess of normal mortality due to attacks by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators. As under the 2008 Farm Bill, there is not a State or National "trigger" such as an emergency declaration that provides automatic eligibility for all producers in a particular State, county, or region. For LIP purposes, adverse weather does not include drought (although drought can exacerbate disease such as anthrax, which is eligible under LIP). FSA has the authority to determine eligibility of livestock losses caused by other adverse weather or other conditions, including disease caused by such weather and whether the disease is exacerbated by the adverse weather. This rule clarifies that if a disease is determined by FSA not to be exacerbated by adverse weather events or is preventable by implementing and following acceptable management practices, such as vaccination, the disease is not eligible for payment under LIP. FSA also has the authority to determine eligibility of livestock losses caused by animals other than wolves and avian predators that have been reintroduced into the wild by the Federal Government or protected by Federal law.

LIP payments and eligibilities will be calculated on the type of eligible livestock and the actual losses and the calculations will be made by FSA-approved categories. As under the

previous LIP provisions, benefits are only available for the owners of livestock or for "contract growers"—persons who produce livestock owned by someone else, but have a risk in the livestock (such as a farmer who raises chickens owned by a company that produces chicken products, but does not receive payment for livestock that die before the livestock is mature and returned to the owner). This rule does not change eligible livestock for payment to livestock owners, which includes beef cattle, dairy cattle, buffalo, beefalo, equine, sheep, goats, deer, swine, poultry, reindeer, elk, emus, alpacas, and llamas. It also does not change the eligible livestock for payment to contract growers, which include only swine and poultry because those are the only known examples of that kind of production arrangement. To be eligible livestock for LIP, as of the day they died the livestock must have been both of the following:

- Owned by an eligible owner or in the possession of an eligible contract grower, and
- Maintained for commercial use as part of a farming operation of the participant on the day they died.

As under the previous LIP provisions, eligibility for payments to poultry and swine contract growers will be limited based on the amount of their contractual risk and other payments received. Payments will not exceed their contractual risk, as determined by FSA. Any compensation received by the contract grower from the contractor for loss of income for the dead livestock will be deducted from the contract grower's LIP payment. When a contract grower is in possession of the livestock at the time of death, only the contract grower will be eligible for the payment; the owner is not eligible. Animals kept for recreational purposes, such as hunting animals, animals used for roping practice, pets, and show animals, continue to be ineligible for LIP under this rule.

Determination of LIP payment eligibility will be based on actual losses in excess of normal mortality for the calendar year for the relevant animal type and approved category by an individual producer or contract grower.

Applying for LIP Payment

This rule does not change the application process for LIP. Producers must file both a notice of loss and an application. A notice of loss will not automatically qualify a producer for payment. Because the eligible losses are only those above normal mortality and that is calculated on a yearly basis, a loss occurring in, for example, July, will

not necessarily generate a claim depending on how great the losses are, natural or otherwise, for the rest of the year. It could be, however, that a loss in July is so great that the producer is already beyond normal mortality for the year, in which case the producer could already be eligible for payment.

For losses that occurred on or after October 1, 2011, and before January 1, 2015, producers must provide a notice of loss and application for payment to FSA no later than January 30, 2015. For 2015 and subsequent calendar year losses, producers must provide a notice of loss to FSA by the earlier of 30 calendar days of when the loss of livestock is apparent to the participant, or 30 calendar days after the end of the calendar year in which the loss of livestock occurred. Other documentation is required for a complete application for payment, as described in this rule. For 2015 and subsequent calendar year losses, the completed application must be submitted to the FSA county office no later than 30 calendar days after the end of the calendar year in which the loss of livestock occurred. Producers that suffer multiple livestock losses during the calendar year may file multiple notices of loss and multiple applications for payment.

This rule provides less restrictive loss documentation requirements for livestock death losses that occurred from October 1, 2011, to before January 1, 2015, because producers were not provided with advanced notice of program requirements. Additionally, the previous LIP authorized by the 2008 Farm Bill had expired and there was no notice of any future LIP to cover losses beyond the scope of the 2008 Farm Bill. Accordingly, livestock producers may provide proof of death and inventories that may not be verifiable but that are reliable and reasonable documentation according to the provisions in this rule.

This rule provides new provisions to address eligibility of losses for calf and lamb open range livestock operations. Specific provisions for these operations are necessary to determine proof of death and inventory because the calf and lamb open range livestock operations have had difficulties in meeting the previous proof of death and inventory requirements given the dispersed nature of their production practices. Calf and lamb open range livestock operations now may provide proof of inventory and loss by using the livestock beginning inventory history for reporting losses. If inventory records are not available, a default national birthing rate of 90 percent for calves and 160 percent for lambs will be used.

When beginning inventory records are not available, as specified in this rule in addition to submitting other required records, verifiable beginning inventory records for ewes or cow will be submitted along with verifiable or reliable ending inventory records for lambs or calves. With that information, FSA will calculate the beginning inventory for that year. The Deputy Administrator has the authority to make adjustments as necessary. If records are available for less than 3 years, the calculation for inventory will include a reduction for the years of missing data. These provisions are discretionary.

LIP Payment Calculations

This rule does not change the LIP payment calculation. As specified in the 2014 Farm Bill, the payment for livestock owners will continue to be calculated based on 75 percent of the average fair market value of the applicable livestock on the day before the date of death of the livestock, as determined by FSA. When determining the market value of applicable livestock, FSA will establish market values for each type and category of livestock using data from credible livestock markets. Credible livestock markets will include sale barns and local sales as well as sales at terminal market centers or slaughtering facilities. For contract growers, the payment will continue to be based on 75 percent of the average income loss sustained by the grower with respect to the dead livestock.

FSA, through the State FSA offices, will obtain recommendations from applicable State livestock organizations, State Cooperative Extension Service, and other knowledgeable and credible sources, to establish the normal mortality rate for each type of livestock on a State-by-State basis when changes are warranted. As under the previous provisions, payments are only available for losses over normal mortality over the course of the year and those rates will be established on a State-by-State basis.

Specific Provisions for TAP

This rule moves the existing regulations for TAP in 7 CFR part 760, subpart F, to 7 CFR part 1416, subpart E. The 2014 Farm Bill authorizes the Secretary to assist eligible orchardists and nursery tree growers that have incurred tree, bush, or vine mortality losses in excess of 15 percent, adjusted for normal mortality, due to natural disaster, including plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other occurrence, as determined by the Secretary. TAP is a cost-reimbursement program, which means that payments

are calculated based on estimated actual costs to replace or rehabilitate lost or damaged trees, bushes, or vines. The replacement and rehabilitation activities must take place within 12 months after the application is approved. Payment is not made until the activities are completed. TAP was previously authorized under the 2008 Farm Bill, and the program will continue as in prior years, with the mandatory and discretionary changes specified in this rule. The main mandatory change is that the reimbursement rate is reduced, from 70 percent to 65 percent, for replanting costs. The discretionary provisions include the deadline for application for payment for retroactive losses, and that the duration of a plant disease period is determined by the Deputy Administrator and could be longer than the previous limit of one year.

Eligibility Requirements

Eligible losses and eligible producers under TAP will not change from the provisions implemented under the 2008 Farm Bill, except for the date (on or after October 1, 2011) that eligible producers must have suffered eligible losses as a result of a natural disaster, which includes plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other occurrence, as determined by the Secretary. Commercially grown trees, vines, and bushes are eligible. The 2014 Farm Bill does not change the eligibility "trigger" of mortality losses in excess of 15 percent, adjusted for normal damage and mortality. While mortality for other natural disasters is assessed on a calendar year basis, mortality related to plant disease may be examined over longer periods if determined appropriate considering the typically longer time-scale for these infections. For example, a plant disease may infect an orchard of 1,000 trees where the normal mortality is 2% per year or 20 trees. While the disease causes increased mortality, best management practices can keep infected trees productive and keep the annual mortality to 8% or 80 trees. After three years of infection, the orchard would exceed the 15% trigger and become eligible for TAP assistance for the remainder of the infection (the orchard would have lost 240 trees with 60 due to normal mortality and 180 due to disease). Considering mortality over the length of the infection for purposes of the 15% trigger also encourages proper management to control the impacts of a disease. A 15% annual trigger for plant disease could encourage poor management to try to reach the threshold, although TAP continues to

exclude losses that could be prevented through reasonable and available measures. Specific policies and procedures will be established regarding mortality and reasonable management, as appropriate, depending on the characteristics of the disease in question. For example, citrus canker greening might result in such losses over a period of several years. Normal mortality losses are those associated with the normal upkeep of the orchard or nursery in the region. Damage losses are not eligible for payment unless the 15 percent normal mortality trigger is met. Losses due to causes other than natural disaster will not be eligible for payment.

Applying for TAP Payment

To obtain a TAP payment for losses that occurred on or after October 1, 2011, through the end of the 2014 calendar year, a producer must provide an application for payment and supporting documentation to FSA by the later of January 31, 2015, or 90 calendar days after the disaster event or date when the loss is apparent to the producer. During the 2015 calendar year or later, a producer must provide an application for payment and supporting documentation to FSA within 90 calendar days of the disaster event or date upon which the loss of trees, bushes, or vines is apparent. Producers that suffer multiple losses during the year may file multiple applications for payment.

TAP Payment Calculation

This rule changes the calculation of TAP payments by reducing the reimbursement amount for the cost of replanting trees lost due to a natural disaster from 70 percent to 65 percent, in excess of 15 percent mortality or, at the option of the Secretary, sufficient seedlings to reestablish a stand. The 65 percent rate is required by the 2014 Farm Bill and FSA has no discretion. The rate for rehabilitation of eligible trees, bushes, or vines, which is 50 percent of the cost of pruning, removal, and other costs incurred for salvaging the existing plants, or in the case of plant mortality, to prepare land for replanting, subject to the maximum allowable FSA rate remains the same as it was under the previous TAP. The 50 percent is only payable for losses that reflect a greater than 15 percent loss taking into account normal mortality and damage. A producer can be eligible for payment for both replanting and rehabilitation costs.

As under the previous provisions, the TAP payment will be calculated based on the actual costs of the approved

practices, or the rates established by the Deputy Administrator, whichever is lower. Calculations will be made using FSA-approved categories of plants and practices. Losses must be verified by a field visit and approved practices must be completed before payment will be made. This rule does not change the requirements regarding documentation to show that practices are complete, such as receipts for labor costs,

equipment rental, and purchases of seedlings or cuttings. Participants may not receive TAP payments on more than 500 acres of eligible trees or tree seedlings per program year. This is a change from the previous regulation.

Structure and Organization of the Disaster Assistance Regulations

The regulations in 7 CFR part 760 for general provisions, ELAP, LFP, LIP, and

TAP will be revised in a subsequent rulemaking to remove obsolete provisions that apply to programs that were not reauthorized. Regulations for the new programs will be established in 7 CFR part 1416, as described in the table below:

Program	Current Part and Subpart	New Part and Subpart
General Provisions	Part 760, Subpart B (all supplemental disaster assistance programs authorized by the 2008 Farm Bill, including SURE).	Part 1416, Subpart A.
ELAP	Part 760, Subpart C (previous ELAP under 2008 Farm Bill)	Part 1416, Subpart B.
LFP	Part 760, Subpart D (previous LFP under 2008 Farm Bill)	Part 1416, Subpart C.
LIP	Part 760, Subpart E (previous LIP under 2008 Farm Bill)	Part 1416, Subpart D.
TAP	Part 760, Subpart F (previous TAP under 2008 Farm Bill)	Part 1416, Subpart E.

Overview—Payment Limit and AGI Changes

This final rule implements payment limit and AGI provisions in sections 1119, 1501, 1603, 1605, 2005, 2206, and 12305 of the 2014 Farm Bill concerning payment eligibility requirements and payment limits for participants in CCC-funded programs. The 2014 Farm Bill provides revised annual payment limitation amounts per person or legal entity, and revised eligibility requirements based on the average annual income amount of the program participant. Overall, the 2014 Farm Bill simplifies the payment limit and payment eligibility requirements as compared to the requirements specified in the 2008 Farm Bill. This final rule amends 7 CFR Part 1400 to implement these changes. The changes in this rule are required by the 2014 Farm Bill; FSA has no discretion in setting payment limits or income-related payment eligibility requirements.

Payment Limits

This rule amends the payment limits specified in 7 CFR 1400.1 “Applicability” as required by the 2014 Farm Bill. This rule removes payment limits for programs that were not reauthorized by the 2014 Farm Bill. Neither this rule nor the 2014 Farm Bill change the method by which payments are attributed to persons and legal entities.

Section 1501(f) of the 2014 Farm Bill specifies the payment limits that apply to the disaster programs. LFP, LIP, and ELAP payments issued under the 2014 Farm Bill are collectively limited to \$125,000 per person or legal entity for each year. This limit applies to payments in 2014 for fiscal year 2012 and 2013 losses. TAP has a separate \$125,000 payment limit. These limits

are slightly higher than the limits specified in the 2008 Farm Bill. In the 2008 Farm Bill, ELAP, LFP, LIP, and SURE were collectively limited to \$100,000 per person or legal entity, and TAP had a separate \$100,000 limit.

The total amount of payments received, directly or indirectly, by a person or legal entity for any crop year for annual payments and benefits received under the new Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) programs, and loan deficiency payments (LDP) and marketing loan gains (MLG) for commodities except peanuts, is \$125,000, as specified in Section 1603(b) of the 2014 Farm Bill. There is a separate limit of \$125,000 per year for payments under ARC, PLC, LDPs and MLGs for peanuts. This rule removes references to payment limits for the Direct and Countercyclical Program (DCP) and the Average Crop Revenue Election Program (ACRE) because those programs were not reauthorized by the 2014 Farm Bill. There was no payment limit for LDP, Marketing Assistance Loans, or MLG in the 2008 Farm Bill.

As specified in Section 1119 of the 2014 Farm Bill, the payments received under the new Transition Assistance for Producers of Upland Cotton program are limited to \$40,000 per person or legal entity for each of the years 2014 and 2015. That program is only authorized for 2014 and 2015.

As specified in section 12305 of the 2014 Farm Bill, NAP payments have an annual limitation of \$125,000 per person or legal entity. The 2008 Farm Bill had a limit of \$100,000 for NAP benefits.

Section 2005 of the 2014 Farm Bill does not change the payment limit for CRP of \$50,000. For contracts signed after October 1, 2008, all CRP payments

are also limited by the direct attribution provisions currently in 7 CFR 1400, which are not changing. CRP contracts that were in place before October 1, 2008, are subject to the payment limitation rules that were in effect on the date of contract approval. Prior to the 2008 Farm Bill, the CRP program had the same payment limit but different provisions for payment attribution to entities.

Section 2206 of the 2014 Farm Bill changes the payment limit for the Environmental Quality Incentives Program (EQIP). A person or legal entity may not receive, directly or indirectly, in excess of \$450,000 in EQIP payments for all EQIP contracts entered into under the 2014 Farm Bill period of fiscal years 2014 through 2018. The EQIP payment limitation under the 2008 Farm Bill was \$300,000, unless the Chief, NRCS, waived the payment limitation up to \$450,000 for a project of special environmental significance. The 2014 Farm Bill did not make any changes to the payment limitations for the Agricultural Management Assistance (AMA) program or the Conservation Stewardship Program (CSP). There is no payment limitation under the Agricultural Conservation Easement Program (ACEP).

This rule removes references to payment limits for conservation programs that were not reauthorized by the 2014 Farm Bill. Except for CRP, there are no payment limits for conservation programs; rather the program payments may be limited by available funding for specific programs. That is not a change from the 2008 Farm Bill, which also had no payment limits for conservation programs other than CRP. The 2014 Farm Bill combines various conservation programs and does not reauthorize others. This rule revises

7 CFR part 1400 to reflect the new names of these programs, and to remove the ones that are not reauthorized.

SURE, as authorized by the 2008 Farm Bill, was not repealed by the 2014 Farm Bill and therefore remains in effect for losses on or before September 30, 2011. The AGI and payment limit regulations in effect when those losses occurred apply. Specifically, the average AGI limits of \$500,000 nonfarm AGI and \$750,000 farm AGI apply, and the \$100,000 per person or legal entity payment limitation. These limits are separate from the AGI requirements and payment limitation amount applicable to the LIP, LFP, TAP, and ELAP benefits authorized under the 2014 Farm Bill.

Income Limits for Payment Eligibility

The 2014 Farm Bill specifies that persons and legal entities whose income is above a certain threshold are not eligible for most CCC and FSA program benefits. Section 1605 of the 2014 Farm Bill provides a new average AGI limitation applicable to all commodity, price support, disaster assistance, and conservation programs, including but not limited to FSA and CCC programs in titles I, II, and XII of the 2014 Farm Bill. These requirements also apply to the Natural Resource Conservation Service (NRCS) programs funded by CCC, including AMA, CSP, EQIP, and ACEP. This rule amends § 1400.3, “Definitions,” § 1400.500, “Applicability,” and § 1400.501, “Determination of Average Adjusted Gross Income,” to implement the 2014 Farm Bill changes to AGI limitations.

Effective for the 2014 and subsequent crop, program, and fiscal years, all commodity, price support, and disaster assistance program payments and benefits are subject to an average AGI limitation of \$900,000 per person or legal entity. This limit also applies to payments authorized by the 2014 Farm Bill for retroactive benefits for the 2012 or 2013 crop, program, or fiscal year. Effective for the fiscal year 2015 and subsequent years, the same income limitation is applicable to all conservation program payments and benefits. (For conservation programs that were reauthorized by the American Taxpayer Relief Act of 2012, Pub. L. 112–240, the 2008 Farm Bill AGI limits applied for 2013 payments.) How AGI is defined and calculated has not changed, in either the 2014 Farm Bill or in this rule.

The single average AGI limitation of \$900,000 replaces the multiple AGI limitations specified in the 2008 Farm Bill and limitations based on farm and nonfarm income amounts. Therefore, this rule removes all the references to

farm and nonfarm income requirements, leaving only the general AGI requirements, which are only changed in the amount. The limits specified in the 2008 Farm Bill were \$500,000 in nonfarm income and \$750,000 in farm income for commodity programs, with a \$1 million nonfarm income limit for conservation program eligibility. The 2008 Farm Bill allowed a waiver to the AGI limit for conservation programs if at least 66.66 percent of the participant’s income was from farming, and also allowed the Secretary to waive the AGI limit on a case by case basis for other reasons to protect environmentally sensitive land of special significance. The AGI waivers for conservation practices are not reauthorized in the 2014 Farm Bill. However, Section 2401 of the 2014 Farm Bill authorizes the Secretary to waive the AGI limit for payments under the Regional Conservation Partnership Program (RCPP) for participating producers if the Secretary determines that the waiver is necessary to fulfill the objectives of the program.

The 2014 Farm Bill combines various conservation programs and does not reauthorize others. This rule is revised to reflect the new names of these programs, and to remove the ones that are not reauthorized. The average AGI limit of \$900,000 applies to all conservation programs, effective fiscal year 2015. However, the average AGI limit applies to AMA in FY 2014. As noted above, there is no authorization for AGI waivers in the 2014 Farm Bill except for RCPP payments and therefore this rule removes that provision from 7 CFR 1400. Waivers of the AGI limit for RCPP will be addressed in the regulations for the covered programs under RCPP.

This rule makes two minor editorial changes in 1400.502, “Compliance and Enforcement,” to clarify that failure to comply with the AGI requirements of this part will result in ineligibility.

Other Eligibility Requirements in Part 1400 Unchanged

The 2014 Farm Bill did not change other payment eligibility requirements that are specified in 7 CFR part 1400. For example, the existing eligibility restrictions on foreign entities and state governments did not change. Payment limitation by direct attribution to a person or legal entity did not change from what was specified in the 2008 Farm Bill and is currently specified in 7 CFR part 1400.

Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires

that a notice of proposed rulemaking be published in the **Federal Register** and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. The regulations to implement the provisions of Title I and the administration of Title I of the 2014 Farm Bill are exempt from the notice and comment provisions of 5 U.S.C. 553 and the Paperwork Reduction Act (44 U.S.C. chapter 35), as specified in section 1601(c)(2) of the 2014 Farm Bill.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule must be published in the **Federal Register**, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. In making this final rule exempt from notice and comment through section 1601(c)(2) of the 2008 Farm Bill, using the administrative procedure provisions in 5 U.S.C. 553, FSA finds that there is good cause for making this rule effective less than 30 days after publication in the **Federal Register**. This rule allows FSA to provide benefits to producers who losses caused by adverse weather, natural disasters, or other conditions. Therefore, to begin providing benefits to producers as soon as possible, this final rule is effective when published in the **Federal Register**.

Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has reviewed this rule. This

regulatory action is being taken to implement a major budgetary program required by the 2014 Farm Bill. Consistent with OMB guidance, this type of action is considered a budgetary transfer representing a payment from taxpayers to program beneficiaries unrelated to the provision of any goods or services in exchange for the payment. As such, there are no economic gains, because the benefits and payments to those who receive such a transfer are matched by the costs borne by taxpayers to offset disaster losses by program beneficiaries. The estimated transfer payments for disaster assistance provided by this rule are summarized below. The full cost benefit analysis is available on regulations.gov.

Cost Benefit Analysis Summary

The 2014 Farm Bill authorizes four permanent livestock disaster assistance programs: LIP, LFP, ELAP, and TAP. The permanent disaster assistance programs provide a permanent means of addressing the same needs as programs provided to producers on an ad hoc basis in the past. The estimated annual payments of LIP, LFP, and ELAP and TAP is approximately \$502 million and provides targeted payments to livestock and honey bee producers who suffer losses from a disaster.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because CCC and FSA are not required by any law to publish a proposed rule for public comments on this rule.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). FSA has determined that the provisions identified in this final rule are administrative in nature, intended to clarify the mandatory requirements of

the programs, as defined in the 2014 Farm Bill, and do not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. While OMB has designated this rule as “economically significant” under Executive Order 12866, “. . . economic or social effects are not intended by themselves to require preparation of an environmental impact statement” (40 CFR 1508.14), when not interrelated to natural or physical environmental effects. Therefore, as this rule presents administrative clarifications only, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. As required by the 2014 Farm Bill, the programs in this rule are retroactive to October 1, 2011. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on

State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” This Executive Order imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The policies contained in this rule do not preempt Tribal law.

The policies contained in this rule do not, to our knowledge, impose substantial unreimbursed direct compliance costs on Indian Tribal governments, have Tribal implications, or preempt Tribal law. USDA continues to consult with Tribal officials to have a meaningful consultation and collaboration on the development and strengthening of USDA regulations. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as Webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of 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 UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This rule has been determined to be Major under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104–121) (SBREFA).

SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. Section 1601(c)(3) of the 2014 Farm Bill provides that the authority in Section 808 of SBREFA will be used in implementing the changes required by Title I of the 2014 Farm Bill, such as for the changes being made by this rule. Consistent with section 1601(c)(3) of the 2014 Farm Bill, FSA therefore finds that it would be contrary to the public interest to delay implementation of this rule because it would significantly delay implementation of the program changes required by the 2014 Farm Bill by impeding the conduct of future signups without having these additional changes to the program regulations in place. Therefore, this rule is effective on the date of its publication in the **Federal Register**.

Federal Assistance Programs

The titles and numbers of the Federal Domestic Assistance Programs found in the Catalog of Federal Domestic Assistance to which this rule applies are:

- 10.069—Conservation Reserve Program
- 10.088—Livestock Indemnity Program
- 10.089—Livestock Forage Disaster Program
- 10.091—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program
- 10.092—Tree Assistance Program
- 10.912—Environmental Quality Incentives Program
- 10.917—Agricultural Management Assistance

Paperwork Reduction Act of 1995

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c) of the 2014 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

FSA and CCC are 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.

List of Subjects

7 CFR Part 1400

Agriculture, Loan programs—agriculture, Conservation, Price support programs.

7 CFR Part 1416

Dairy products, Indemnity payments, Pesticide and pests, Reporting and recordkeeping requirements.

For the reasons discussed above, CCC and FSA amends 7 CFR parts 1400 and 1416 as follows:

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

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

Authority: 7 U.S.C. 1308, 1308–1, 1308–2, 1308–3, 1308–3a, 1308–4, and 1308–5.

■ 2. The heading for part 1400 is revised to read as set forth above.

Subpart A—General Provisions

■ 3. Revise § 1400.1 to read as follows:

§ 1400.1 Applicability.

(a) This part, except as otherwise noted, is applicable to all of the following programs and any other programs as specified in individual program regulations of this chapter:

- (1) The Agricultural Risk Coverage and Price Loss Coverage Programs and Transition Assistance for Producers of Upland Cotton, part 1412 of this chapter;
- (2) The Conservation Reserve Program (CRP), part 1410 of this chapter;
- (3) The Price Support programs in parts 1421 and 1434 of this chapter;
- (4) The Noninsured Crop Disaster Assistance Program (NAP), part 1437 of this chapter;
- (5) The Livestock Forage Disaster Program (LFP), Livestock Indemnity Program (LIP), and the Emergency Assistance for Livestock, Honey Bees and Farm-raised Fish Program (ELAP), part 1416 of this chapter;

(6) The Tree Assistance Program (TAP), part 1416 of this chapter; and

(7) The Natural Resources Conservation Service (NRCS) conservation programs of this title including the Agricultural Management Assistance (AMA) program, Conservation Stewardship Program (CSP), Environmental Quality Incentives Program (EQIP), and Agricultural Conservation Easement Program (ACEP).

(8) Subparts C and D of this part do not apply to the programs listed in paragraphs (a)(2) through (7) of this section.

(b) This part will apply to the programs specified in:

- (1) Paragraphs (a)(1), (3), (4), (5), and (7) of this section on a crop year basis;
- (2) Paragraph (a)(2) of this section on a fiscal year basis;
- (3) Paragraph (a)(6) of this section on a calendar year basis; and
- (4) Paragraph (a)(7) of this section when funding is available.

(c) This part will be used to determine the manner in which payments will be attributed to persons and legal entities for the payment limitations provided in this section and to other programs as specified in individual program regulations in this chapter.

(d) Where more than one provision of this part may apply, the provision that is most restrictive on the program participant will be applied.

(e) The payment limitations of this part are not applicable to:

- (1) Payments made under State conservation reserve enhancement program agreements approved by the Secretary, and
- (2) Payments made subject to this part if ownership interest in land or a commodity is transferred as the result of the death of a program participant and the new owner of the land or commodity has succeeded to the contract of the prior owner. If the successor is otherwise eligible, payments cannot exceed the amount the previous owner was entitled to receive at the time of death.

(f) The following amounts are the limitations on payments per person or legal entity for the applicable period for each payment or benefit.

Payment or benefit	Limitation per person or legal entity, per crop, program, or fiscal year
(1) Price Loss Coverage, Agricultural Risk Coverage, Loan Deficiency Program, and Marketing Loan Gain payments (other than Peanuts)	\$125,000

Payment or benefit	Limitation per person or legal entity, per crop, program, or fiscal year
(2) Price Loss Coverage, Agricultural Risk Coverage, Loan Deficiency Program, and Marketing Loan Gain payments for Peanuts	125,000
(3) Transition Assistance for Producers of Upland Cotton ¹	40,000
(4) CRP annual rental payments ²	50,000
(5) NAP payments	125,000
(6) TAP	125,000
(7) LIP, LFP, and ELAP ³	125,000
(8) CSP ⁴	200,000
(9) EQIP ⁵	450,000
(10) AMA program ⁶	50,000

¹ Transition Assistance for Producers of Upland Cotton is only available in the 2014 and 2015 program years.

² CRP contracts approved prior to October 1, 2008 may exceed the limitation, subject to payment limitation rules in effect on the date of contract approval.

³ Total payments received through LIP, LFP, and ELAP may not exceed \$125,000. A separate limitation applies to TAP payments. (NOTE: For SURE payments for losses on or before September 30, 2011, the payment limit regulations in effect when those losses occurred apply. The SURE limit is separate from the payment limitation amount applicable to the LIP, LFP, TAP, and ELAP benefits authorized under the 2014 Farm Bill.)

⁴ The \$200,000 limit is the total limit under all CSP contracts entered into subsequent to enactment of the 2014 Farm Bill during fiscal years 2014 through 2018.

⁵ The \$450,000 limit is the total limit under all EQIP contracts entered into subsequent to enactment of the 2014 Farm Bill during fiscal years 2014 through 2018.

⁶ The \$50,000 limit is the total limit that a participant may receive under the AMA program in any fiscal year.

■ 4. Amend § 1400.3 as follows:

■ a. Remove the definitions for “Average Adjusted Gross Farm Income” and “Average Adjusted Gross Nonfarm Income”; and

■ b. Revise the definition for “Payment” to read as follows:

§ 1400.3 Definitions.

* * * * *

Payment means:

(1) Payments made in accordance with part 1412 of this chapter or successor regulation of this chapter;

(2) CRP annual rental payments made in accordance with part 1410 of this chapter or successor regulation of this chapter;

(3) NAP payments made in accordance with part 1437 of this chapter or successor regulation of this chapter;

(4) ELAP, LIP, LFP, and TAP payments made in accordance with part 1416 of this chapter or successor regulations of this chapter;

(5) Price support payments made in accordance with parts 1421 and 1434 of this chapter; and

(6) For other programs, any payments designated in individual program regulations in this chapter.

* * * * *

Subpart F—Average Adjusted Gross Income Limitation

■ 5. Amend § 1400.500 as follows:

■ a. Revise paragraphs (a) and (b);

■ b. Remove paragraph (c) through (e); and

■ c. Redesignate paragraphs (f) through (h) as paragraphs (c) through (e).

The revisions read as follows:

§ 1400.500 Applicability.

(a) A person or legal entity, other than a joint venture or general partnership, will not be eligible to receive, directly or indirectly, certain program payments or benefits described in § 1400.1 if the average adjusted gross income of the person or legal entity exceeds \$900,000 for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by the Deputy Administrator.

(b) Determinations made under this subpart for conservation programs are:

(1) Applicable starting with the 2015 fiscal year, except for AMA which is applicable with the 2014 fiscal year;

(2) Based on the year for which the conservation program contract or agreement is approved; and

(3) Applicable for the entire term of the subject agreement or contract.

* * * * *

■ 6. Amend § 1400.501 as follows:

■ a. Revise paragraph (a) introductory text;

■ b. Remove paragraphs (a)(1) through (12), (b), and (c) introductory text;

■ b. Redesignate paragraphs (c)(1) through (6) as (a)(1) through (6); and

■ d. Redesignate paragraph (d) as paragraph (b).

The revision reads as follows:

§ 1400.501 Determination of average adjusted gross income.

(a) Except as otherwise provided in this subpart, average adjusted gross income means:

* * * * *

§ 1400.502 [Amended]

■ 7. Amend § 1400.502 as follows:

■ a. In paragraph (a)(3), at the end, remove the word “or”; and

■ b. In paragraph (c), remove the words “provide necessary and accurate information to verify compliance, or failure to”.

■ 8. Revise part 1416 to read as follows:

PART 1416—EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS

Subpart A—General Provisions for Supplemental Agricultural Disaster Assistance Programs

Sec.

- 1416.1 Applicability.
- 1416.2 Administration of ELAP, LFP, LIP, and TAP.
- 1416.3 Eligible producer.
- 1416.5 Equitable relief.
- 1416.6 Payment limitation.
- 1416.7 Misrepresentation.
- 1416.8 Appeals.
- 1416.9 Offsets, assignments, and debt settlement.
- 1416.10 Records and inspections.
- 1416.11 Refunds; joint and several liability.
- 1416.12 Minors.
- 1416.13 Deceased individuals or dissolved entities.
- 1416.14 Miscellaneous.

Subpart B—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program

- 1416.101 Applicability.
- 1416.102 Definitions.
- 1416.103 Eligible losses, adverse weather, and other loss conditions.
- 1416.104 Eligible livestock, honeybees, and farm-raised fish.

- 1416.105 Eligible producers, owners, and contract growers.
- 1416.106 Notice of loss and application process.
- 1416.107 Notice of loss and application period.
- 1416.108 Availability of funds.
- 1416.109 National Payment Rate.
- 1416.110 Livestock payment calculations.
- 1416.111 Honeybee payment calculations.
- 1416.112 Farm-raised fish payment calculations.

Subpart C—Livestock Forage Disaster Program

- 1416.201 Applicability.
- 1416.202 Definitions.
- 1416.203 Eligible livestock producer.
- 1416.204 Covered livestock.
- 1416.205 Eligible grazing losses.
- 1416.206 Application for payment.
- 1416.207 Payment calculation.

Subpart D—Livestock Indemnity Program

- 1416.301 Applicability.
- 1416.302 Definitions.
- 1416.303 Eligible owners and contract growers.
- 1416.304 Eligible livestock.
- 1416.305 Application process.
- 1416.306 Payment calculation.

Subpart E—Tree Assistance Program

- 1416.400 Applicability.
- 1416.401 Administration.
- 1416.402 Definitions.
- 1416.403 Eligible losses.
- 1416.404 Eligible orchardists and nursery tree growers.
- 1416.405 Application.
- 1416.406 Payment Calculation.
- 1416.407 Obligations of a Participant.

Authority: Title III, Pub. L. 109–234, 120 Stat. 474; 16 U.S.C. 3801, note.

Subpart A—General Provisions for Supplemental Agricultural Disaster Assistance Programs

§ 1416.1 Applicability.

(a) This subpart establishes general conditions for this subpart and subparts B through E of this part and applies only to those subparts. Subparts B through E cover the following programs authorized by the Agricultural Act of 2014 (Pub. L. 113–79, also referred to as the 2014 Farm Bill):

- (1) Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP);
- (2) Livestock Forage Disaster Program (LFP);
- (3) Livestock Indemnity Payments Program (LIP); and
- (4) Tree Assistance Program (TAP).

(b) To be eligible for payments under these programs, participants must comply with all provisions under this subpart and the relevant particular subpart for that program. All other provisions of law also apply.

§ 1416.2 Administration of ELAP, LFP, LIP, and TAP.

(a) The programs in subparts B through E of this part will be administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA) (who also serves as the Executive Vice-President, CCC), and the Deputy Administrator for Farm Programs, FSA (referred to as the “Deputy Administrator” in this part).

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this part as amended or supplemented, except as specified in paragraph (e) of this section.

(c) The State FSA committee will take any action required by the regulations of this part that the county FSA committee has not taken. The State FSA committee will also:

(1) Correct, or require a county FSA committee to correct, any action taken by such county FSA committee that is not in accordance with the regulations of this part or

(2) Require a county FSA committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county FSA committee will preclude the FSA Administrator, the Deputy Administrator, or a designee or other such person, from determining any question arising under the programs of this part, or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator may authorize State and county FSA committees to waive or modify non-statutory deadlines, or other program requirements of this part in cases where lateness or failure to meet such requirements does not adversely affect operation of the programs in this part. Participants have no right to an exception under this provision. The Deputy Administrator’s refusal to consider cases or circumstances or decision not to exercise this discretionary authority under this provision will not be considered an adverse decision and is not appealable.

§ 1416.3 Eligible producer.

(a) In general, the term “eligible producer” means, in addition to other requirements as may apply, an individual or entity described in paragraph (b) of this section that, as determined by the Secretary, assumes the production and market risks associated with the agricultural production of crops or livestock on a farm either as the owner of the farm, when there is no contract grower, or a

contract grower of the livestock when there is a contract grower.

(b) To be eligible for benefits, an individual or legal entity must submit a farm operating plan for the purpose of payment limitation review in accordance with part 1400 of this chapter and be a:

- (1) Citizen of the United States;
- (2) Resident alien; for purposes of this part, resident alien means “lawful alien”;
- (3) Partnership of citizens of the United States; or
- (4) Corporation, limited liability corporation, or other farm organizational structure organized under State law.

§ 1416.5 Equitable relief.

The equitable relief provisions of part 718 of this title will not be used to obtain a different program result, payment, or benefit not otherwise available to a participant who satisfies any and all program eligibility provision, conditions of eligibility, or compliance provision.

§ 1416.6 Payment limitation.

(a) For 2011, no person or legal entity, excluding a joint venture or general partnership, as determined according to the rules in part 1400 of this chapter may receive more than:

(1) \$125,000 total in 2011 program year payments under LFP, SURE, ELAP, and LIP combined when at least \$25,000 of such total 2011 program year payments is from LFP or LIP for losses from October 1 through December 31, 2011. If no 2011 program year payments are issued under LFP or LIP for losses occurring from October 1, 2011, through December 31, 2011, the total amount of 2011 program year payments under LFP, SURE, ELAP, and LIP combined is limited to \$100,000.

(2) \$125,000 for the 2011 program year under TAP.

(b) For 2012 and subsequent program years, no person or legal entity, excluding a joint venture or general partnership, as determined by the rules in part 1400 of this chapter may receive, directly or indirectly, more than:

(1) \$125,000 per program year total under ELAP, LFP, and LIP combined; or

(2) \$125,000 per program year under TAP.

(c) The Deputy Administrator may take such actions as needed to avoid a duplication of benefits under the programs provided for in this part, or duplication of benefits received in other programs, and may impose such cross-program payment limitations as may be consistent with the intent of this part.

(d) Beginning with the 2014 program year, if a producer is eligible to receive

benefits under this part is also eligible to receive assistance for the same loss under any other program, including, but not limited to, indemnities made under the Federal Crop Insurance Act (7 U.S.C. 1501–1524) or the noninsured crop disaster assistance program (7 U.S.C. 7333), then the producer must elect whether to receive benefits under this part or under the other program, but not both.

(e) For losses incurred beginning on October 1, 2011, and for the purposes of administering LIP, LFP, ELAP, and TAP, the average adjusted gross income (AGI) limitation provisions in part 1400 of this chapter relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, with certain levels of AGI will apply under this subpart and will apply to each applicant for ELAP, LFP, LIP, and TAP. Specifically, a person or legal entity with an average AGI that exceeds \$900,000 will not be eligible to receive benefits under this part.

(f) The direct attribution provisions in part 1400 of this chapter apply to ELAP, LFP, LIP, and TAP. Under those rules, any payment to any legal entity will also be considered for payment limitation purposes to be a payment to persons or legal entities with an interest in the legal entity or in a sub-entity. If any such interested person or legal entity is over the payment limitation because of payment made directly or indirectly or a combination thereof, then the payment to the actual payee will be reduced commensurate with the amount of the interest of the interested person in the payee. Likewise, by the same method, if anyone with a direct or indirect interest in a legal entity or sub-entity of a payee entity exceeds the AGI levels that would allow a participant to directly receive a payment under this part, then the payment to the actual payee will be reduced commensurately with that interest. For all purposes under this section, unless otherwise specified in part 1400 of this chapter, the AGI figure that will be relevant for a person or legal entity will be an average AGI for the three taxable years that precede the most immediately preceding complete taxable year, as determined by FSA.

§ 1416.7 Misrepresentation.

(a) A participant who is determined to have deliberately misrepresented any fact affecting a program determination made in accordance with this part, or any other part that is applicable to this part, to receive benefits for which the participant would not otherwise be entitled, will not be entitled to program payments and must refund all such payments received, plus interest as

determined in accordance with part 1403 of this chapter. The participant will also be denied program benefits for the immediately subsequent period of at least 2 crop years, and up to 5 crop years. Interest will run from the date of the original disbursement by CCC.

(b) A participant will refund to CCC all program payments, in accordance with § 1416.11, received by such participant with respect to all contracts or applications, as may be applicable, if the participant is determined to have knowingly misrepresented any fact affecting a program determination.

§ 1416.8 Appeals.

Appeal regulations in parts 11 and 780 of this title apply to this part.

§ 1416.9 Offsets, assignments, and debt settlement.

(a) Any payment to any participant under this part will be made without regard to questions of title under State law, and without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings in part 1403 of this chapter apply to payments made under this part.

(b) Any participant entitled to any payment may assign any payment(s) in accordance with regulations governing the assignment of payments in part 1404 of this chapter.

§ 1416.10 Records and inspections.

(a) Any participant receiving payments under any program in ELAP, LFP, LIP or TAP, or any other legal entity or person who provides information for the purposes of enabling a participant to receive a payment under ELAP, LFP, LIP, or TAP must:

(1) Maintain any books, records, and accounts supporting the information for 3 years following the end of the year during which the request for payment was submitted, and

(2) Allow authorized representatives of USDA and the Government Accountability Office, during regular business hours, to inspect, examine, and make copies of such books or records, and to enter the farm and to inspect and verify all applicable livestock and acreage in which the participant has an interest for the purpose of confirming the accuracy of information provided by or for the participant.

(b) [Reserved]

§ 1416.11 Refunds; joint and several liability.

(a) In the event that the participant fails to comply with any term, requirement, or condition for payment

or assistance arising under ELAP, LFP, LIP, or TAP and if any refund of a payment to CCC will otherwise become due in connection with this part, the participant must refund to CCC all payments made in regard to such matter, together with interest and late-payment charges as provided for in part 1403 of this chapter provided that interest will in all cases run from the date of the original disbursement.

(b) All persons with a financial interest in an operation or in an application for payment will be jointly and severally liable for any refund, including related charges, that is determined to be due CCC for any reason under this part.

§ 1416.12 Minors.

A minor child is eligible to apply for program benefits under ELAP, LFP, LIP, or TAP if all the eligibility requirements are met and the provision for minor children in part 1400 of this chapter are met.

§ 1416.13 Deceased individuals or dissolved entities.

(a) Payments may be made for eligible losses suffered by an eligible participant who is now a deceased individual or is a dissolved entity if a representative, who currently has authority to act on behalf of the estate of the deceased participant, signs the application for payment.

(b) Legal documents showing proof of authority to sign for the deceased individual or dissolved entity must be provided.

(c) If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

§ 1416.14 Miscellaneous.

(a) As a condition to receive benefits under ELAP, LFP, LIP, or TAP, a participant must have been in compliance with the applicable provisions of parts 12 and 718 of this title and 1400 of this chapter, and must not otherwise be precluded from receiving benefits under those provisions or under any law.

(b) [Reserved]

Subpart B—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program

§ 1416.101 Applicability.

(a) This subpart establishes the terms and conditions under which the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) will be administered.

(b) Eligible producers of livestock, honeybees, and farm-raised fish will be compensated for eligible losses due to an eligible adverse weather or eligible loss condition that occurred in the program year for which the producer requests benefits. The eligible loss must have been a direct result of eligible adverse weather or eligible loss conditions as determined by the Deputy Administrator. ELAP does not cover losses that are covered under LFP or LIP.

§ 1416.102 Definitions.

The following definitions apply to this subpart and to the administration of ELAP. The definitions in parts 718 of this title and 1400 of this chapter also apply, except where they conflict with the definitions in this section.

Adult beef bull means a male beef breed bovine animal that was used for breeding purposes that was at least 2 years old before the beginning date of the eligible adverse weather or eligible loss condition.

Adult beef cow means a female beef breed bovine animal that had delivered one or more offspring before the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant on or by the beginning date of the eligible adverse weather or eligible loss condition.

Adult buffalo and beefalo bull means a male animal of those breeds that was used for breeding purposes and was at least 2 years old before the beginning date of the eligible adverse weather or eligible loss condition.

Adult buffalo and beefalo cow means a female animal of those breeds that had delivered one or more offspring before the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred buffalo or beefalo heifer is also considered an adult buffalo or beefalo cow if it was pregnant by the beginning date of the eligible adverse weather or eligible loss condition.

Adult dairy bull means a male dairy breed bovine animal that was used primarily for breeding dairy cows and was at least 2 years old by the beginning date of the eligible adverse weather or eligible loss condition.

Adult dairy cow means a female bovine dairy breed animal used for the purpose of providing milk for human consumption that had delivered one or more offspring by the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant by the beginning

date of the eligible adverse weather or eligible loss condition.

Agricultural operation means a farming operation.

APHIS means the Animal and Plant Health Inspection Service.

Application means CCC or FSA form used to apply for either the emergency loss assistance for livestock or emergency loss assistance for farm-raised fish or honeybees.

Aquatic species means any species of aquatic organism grown as food for human consumption, fish raised as feed for fish that are consumed by humans, or ornamental fish propagated and reared in an aquatic medium by a commercial operator on private property in water in a controlled environment. Catfish and crawfish are both defined as aquatic species for ELAP. However, aquatic species do not include reptiles or amphibians.

Bait fish means small fish caught for use as bait to attract large predatory fish. For ELAP, it also must meet the definition of aquatic species and not be raised as food for fish; provided, however, that only bait fish produced in a controlled environment are eligible for payment under ELAP.

Beginning farmer or rancher means a person or legal entity, including all members, shareholders, partners, beneficiaries, etc., (as fits the circumstances) of an entity, who for a program year both:

(1) Has not operated a farm or ranch in the previous consecutive 10 years, and

(2) Will have or has had for the relevant period materially and substantially participated in the operation of a farm or ranch.

Buck means a male goat.

Cattle tick fever means a severe and often fatal disease that destroys red blood cells of cattle, commonly known as Texas or cattle fever, which is spread by *Rhipicephalus* (*Boophilus*) *annulatus*, and the southern cattle tick, *R. (Boophilus) microplus*.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer.

Contract means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock or livestock products.

Controlled environment means an environment in which everything that can practicably be controlled by the participant with structures, facilities, and growing media (including, but not

limited to, water and nutrients) was in fact controlled by the participant at the time of the eligible adverse weather or eligible loss condition.

County committee or county office means the respective FSA committee or office.

Deputy Administrator or DAFP means the Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or the designee.

Eligible adverse weather means, as determined by the Deputy Administrator, an extreme or abnormal damaging weather event that is not expected to occur during the loss period, which results in eligible losses. The eligible adverse weather would have resulted in agricultural losses not covered by other programs in this part for which the Deputy Administrator determines financial assistance should be provided to producers. Adverse weather may include, but is not limited to, blizzard, winter storms, and wildfires. Specific eligible adverse weather may vary based on the type of loss. Identification of eligible adverse weather will include locations (National, State, or county-level) and start and end dates.

Eligible drought means that any area of the county has been rated by the U.S. Drought Monitor as having a D3 (extreme drought) intensity:

(1) At any time during the program year, for additional honeybee feed loss;

(2) That directly impacts water availability at any time during the normal grazing period (for example, snow pack that feeds streams and springs), as determined by the Deputy Administrator or designee, for losses resulting from transporting water to livestock.

Eligible grazing land means land that is native or improved pastureland with permanent vegetative cover or land planted to a crop planted specifically for the purpose of providing grazing for eligible livestock.

Eligible loss condition means a condition that would have resulted in agricultural losses not covered by other programs in this part for which the Deputy Administrator determines financial assistance needs to be provided to producers. Specific eligible loss conditions include, but are not limited to, disease (including cattle tick fever), insect infestation, and colony collapse disorder. Identification of eligible loss conditions will include locations (National, State, or county-level) and start and end dates.

Eligible winter storm means a storm that lasts for at least three consecutive days and is accompanied by high winds,

freezing rain or sleet, heavy snowfall, and extremely cold temperatures.

Equine animal means a domesticated horse, mule, or donkey.

Ewe means a female sheep.

Farming operation means a business enterprise engaged in producing agricultural products.

Farm-raised fish means any aquatic species that is propagated and reared in a controlled environment.

FSA means the Farm Service Agency.

Game or sport fish means fish pursued for sport by recreational anglers; provided, however, that only game or sport fish produced in a controlled environment can generate claims under ELAP.

Goat means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats. Goats are further delineated into categories by sex (bucks and nannies) and age (kids).

Grazing loss means the value, as calculated in § 1416.110(g) or (m), of eligible grazing lost due to an eligible adverse weather or eligible loss condition based on the number of days that the eligible livestock were not able to graze the eligible grazing land during the normal grazing period.

Kid means a goat less than 1 year old.

Lamb means a sheep less than 1 year old.

Limited resource farmer or rancher means a producer who is both:

(1) A producer whose direct or indirect gross farm sales do not exceed \$176,800 (2014 program year) in each of the 2 calendar years that precede the complete taxable year before the relevant program year (for example, for the 2014 program year, the two years would be 2012 and 2011), adjusted upwards in later years for any general inflation, and

(2) A producer whose total household income was at or below the national poverty level for a family of four in each of the same two previous years referenced in paragraph (1) of this definition. (Limited resource farmer or rancher status can be determined using a Web site available through the Limited Resource Farmer and Rancher Online Self Determination Tool through National Resource and Conservation Service at <http://www.lrfstool.sc.egov.usda.gov/tool.aspx>.)

Livestock owner, for death loss purposes, means one having legal ownership of the livestock for which benefits are being requested on the day such livestock died due to an eligible adverse weather or eligible loss condition. For all other purposes of loss under ELAP, "livestock owner" means one having legal ownership of the livestock for which benefits are being

requested during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition.

Nanny means a female goat.

Non-adult beef cattle means a beef breed bovine animal that does not meet the definition of adult beef cow or bull. Non-adult beef cattle are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died. For a loss other than death, means a bovine animal less than 2 years old that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

Non-adult buffalo or beefalo means an animal of those breeds that does not meet the definition of adult buffalo or beefalo cow or bull. Non-adult buffalo or beefalo are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time of death. For a loss other than death, means an animal of those breeds that is less than 2 years old that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

Non-adult dairy cattle means a bovine dairy breed animal used for the purpose of providing milk for human consumption that does not meet the definition of adult dairy cow or bull. Non-adult dairy cattle are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died. For a loss other than death, means a bovine dairy breed animal used for the purpose of providing milk for human consumption that is less than 2 years old that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

Normal grazing period, with respect to a county, means the normal grazing period during the calendar year with respect to each specific type of grazing land or pastureland in the county.

Normal mortality means the numerical amount, computed by a percentage of expected livestock, honeybee colony and farm-raised fish deaths, by category, that normally occur during a program year for a producer, as established for the area by the FSA State Committee for livestock and farm-raised fish, and as established nationwide by the Deputy Administrator for honeybee colonies.

Poultry means domesticated chickens, turkeys, ducks, and geese. Poultry are further delineated into categories by sex, age, and purpose of production as determined by FSA.

Program year means from October 1 through September 30 of the fiscal year in which the loss occurred.

Ram means a male sheep.

Reliable record means any non-verifiable record available that reasonably supports the eligible loss, as determined acceptable by the COC.

Secretary means the Secretary of Agriculture or a designee of the Secretary.

Sheep means a domesticated, ruminant mammal of the genus *Ovis*. Sheep are further defined by sex (rams and ewes) and age (lambs) for purposes of dividing into categories for loss calculations.

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a socially disadvantaged group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. For a legal entity to be considered "socially disadvantaged" a majority of the persons in the entity must in their individual capacities meet this definition. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

- (1) American Indians or Alaskan Natives;
- (2) Asians or Asian-Americans;
- (3) Blacks or African Americans;
- (4) Native Hawaiians or other Pacific Islanders,
- (5) Hispanics; and
- (6) Women.

State committee, State office, county committee, or county office means the respective FSA committee or office.

Swine means a domesticated omnivorous pig, hog, or boar. Swine for purposes of dividing into categories for loss calculations are further delineated into categories by sex and weight as determined by FSA.

United States means all 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any other territory or possession of the United States.

U.S. Drought Monitor is a system for classifying drought severity according to a range of abnormally dry to exceptional drought. It is a collaborative effort between Federal and academic partners, produced on a weekly basis, to synthesize multiple indices, outlooks, and drought impacts on a map and in narrative form. This synthesis of indices is reported by the National Drought Mitigation Center at <http://droughtmonitor.unl.edu>. Should an eligible area not be covered by the U.S. Drought Monitor, the Deputy

Administrator, in consultation with appropriate weather-related agencies and experts, will establish procedures for rating drought intensity using the same range of categories as the U.S. Drought Monitor and use this information in place of the missing data for eligibility purposes.

Verifiable record means a document provided by the producer that can be verified by the County Committee (COC) through an independent source and is used to substantiate the claimed loss.

§ 1416.103 Eligible losses, adverse weather, and other loss conditions.

(a) An eligible loss covered under this subpart is a loss that an eligible producer or contract grower of livestock, honeybees, or farm-raised fish incurs due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator.

(b) A loss covered under LFP or LIP is not eligible for ELAP.

(c) To be eligible, the loss must have occurred during the program year for which payment is being requested.

(d) For a livestock feed loss to be considered an eligible loss, the livestock feed loss must be one of the following:

(1) Loss of purchased forage or feedstuffs that was intended for use as feed for the participant's eligible livestock as specified in § 1416.104(a) that was physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition. The loss must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, blizzard, eligible winter storms, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, or wildfire on non-Federal land;

(2) Loss of mechanically harvested forage or feedstuffs intended for use as feed for the participant's eligible livestock as specified in § 1416.104(a) that was physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition. The loss must have occurred after harvest due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, blizzard, eligible winter storms, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, or wildfire on non-Federal land;

(3) A loss resulting from the additional cost of purchasing additional livestock feed, above normal quantities,

required to maintain the eligible livestock as specified in § 1416.104(a) during an eligible adverse weather or eligible loss condition, until additional livestock feed becomes available, as determined by the Deputy Administrator. To be eligible, the additional feed purchased above normal quantities must be feed that is fed to maintain livestock in the county where the eligible adverse weather or eligible loss condition occurred. Eligible adverse weather or eligible loss conditions, as determined by the Deputy Administrator, including, but not limited to, blizzard, eligible winter storms, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, or wildfire on non-Federal land;

(4) A loss resulting from the additional cost incurred for transporting livestock feed to eligible livestock as specified in § 1416.104(a) due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, costs associated with equipment rental fees for hay lifts and snow removal. To be eligible, the loss must be incurred in combination with a loss described in paragraphs (d)(1), (2), or (3) of this section. The additional costs incurred must have been incurred for losses suffered in the county where the eligible adverse weather or eligible loss condition occurred. Eligible adverse weather or eligible loss conditions, as determined by the Deputy Administrator, include, but not limited to, blizzard, eligible winter storms, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, or wildfire on non-Federal land;

(5) For 2014 and subsequent program years, a loss resulting from the additional cost of transporting water to eligible livestock as specified in § 1416.104(a) due to an eligible drought, including, but not limited to, costs associated with water transport equipment rental fees, labor, and contracted water transportation fees. The cost of the water is not eligible for payment. Transporting water to livestock located on land enrolled in CRP is not an eligible loss under this program. To be eligible for additional cost of transporting water to eligible livestock, the livestock must be on eligible grazing lands that meet all of the following:

(i) Physically located in the county where the eligible adverse weather or eligible loss condition occurred;

(ii) That had adequate livestock watering systems or facilities before the eligible adverse weather or eligible loss condition occurred; and

(iii) That the producer is not normally required to transport water to the grazing land.

(e) For a grazing loss to be considered eligible, the grazing loss must have been incurred:

(1) During the normal grazing period, as specified in § 1416.102;

(2) On eligible grazing land that is physically located in the county where the eligible adverse weather or eligible loss condition occurred;

(3) Due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, blizzard, eligible winter storm, flood, hurricane, hail, lightning, tidal surge, volcanic eruption, and wildfire on non-Federal land. The grazing loss will not be eligible if it is due to an adverse weather condition covered by LFP as specified in subpart C of this part, such as drought or wildfire on federally managed land where the producer is prohibited by the Federal agency from grazing the normally permitted livestock on the managed rangeland due to a fire.

(f) For a loss resulting from the additional cost associated with gathering livestock to treat for cattle tick fever, the livestock treated for cattle tick fever must be considered eligible livestock as specified in § 1416.104(d). To be considered an eligible loss, acceptable records, as determined by the Deputy Administrator, must be on file with APHIS, that provide the number of livestock treated for cattle tick fever and the number of treatments given during the program year.

(g) For a loss due to livestock death to be considered eligible, the livestock death must have occurred in the county where the eligible loss condition occurred. The livestock death must be in excess of normal mortality and due to an eligible loss condition determined as eligible by the Deputy Administrator and not related to eligible adverse weather, as specified in subpart D of this part for LIP.

(h) For honeybee feed or farm-raised fish feed losses to be considered an eligible loss, the honeybee feed or farm-raised fish feed loss must be one of the following:

(1) Loss of honeybee feed or farm-raised fish feed that was intended as feed for the participant's eligible honeybees or farm-raised fish that was physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition. The loss must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy

Administrator, including, but not limited to, earthquake, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, and wildfire.

(2) A loss resulting from the additional cost of purchasing additional honeybee feed, above normal quantities, required to maintain the honeybees during an eligible adverse weather or eligible loss condition, until additional honeybee feed becomes available, as determined by the Deputy Administrator. To be eligible the additional feed purchased above normal quantities must be feed that is fed to maintain honeybees in the county where the eligible adverse weather or eligible loss condition occurred. The loss must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, earthquake, early fall frost, excessive rainfall, flood, hurricane, late spring frost, lightning, tidal surge, tornado, volcanic eruption, wildfire and eligible drought, as specified in § 1416.102.

(i) For honeybee colony or honeybee hive losses to be considered eligible, the hive producer must have incurred the loss in the county where the eligible adverse weather or eligible loss condition occurred. The honeybee colony or hive losses must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, colony collapse disorder, earthquake, eligible winter storm, as specified in § 1416.102, excessive wind, flood, hurricane, lightning, tornado, volcanic eruption, and wildfire. To be considered an eligible honeybee colony loss, the colony loss must be in excess of normal mortality, as established by the Deputy Administrator, and the loss could not have been prevented through reasonable and available measures. Acceptable documentation must be provided upon request by FSA to demonstrate an eligible loss occurred, was associated with an eligible adverse weather event or loss condition, and that generally accepted husbandry and production practices had been followed.

(j) For death losses of bait fish, game fish, or other aquatic species, as determined by the Deputy Administrator, to be considered eligible, the producer must have incurred the fish loss, in excess of normal mortality, in the county where the eligible adverse weather or eligible loss condition occurred. The fish death must be due to an eligible adverse weather or eligible loss condition as determined by the Deputy Administrator including, but not limited to, earthquake, flood, hurricane,

tidal surge, tornado, and volcanic eruption.

§ 1416.104 Eligible livestock, honeybees, and farm-raised fish.

(a) To be considered eligible livestock for livestock grazing and feed, losses resulting from transporting water, and gathering livestock to treat for cattle tick fever, livestock must meet all the following conditions:

(1) Be alpacas, adult or non-adult dairy cattle, adult or non-adult beef cattle, adult or non-adult buffalo, adult or non-adult beefalo, deer, elk, emus, equine, goats, llamas, poultry, reindeer, sheep, or swine;

(2) Except for livestock losses resulting from gathering livestock to treat cattle tick fever, be livestock that would normally have been grazing the eligible grazing land or pastureland during the normal grazing period for the specific type of grazing land or pastureland for the county where the eligible adverse weather or eligible loss condition occurred;

(3) Be livestock that is owned, cash-leased, purchased, under contract for purchase, or been raised by a contract grower or an eligible livestock producer, during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition;

(4) Be livestock that has been maintained for commercial use as part of the producer's farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(5) Be livestock that has not been produced and maintained for reasons other than commercial use as part of a farming operation; and

(6) Be livestock that was not in a feedlot, on the beginning date of the eligible adverse weather or eligible loss condition, as a part of the normal business operation of the producer, as determined by the Deputy Administrator.

(b) The eligible livestock types for grazing and feed losses, losses resulting from transporting water and gathering livestock to treat for cattle tick fever, are:

- (1) Adult beef cows or bulls,
- (2) Adult buffalo or beefalo cows or bulls,
- (3) Adult dairy cows or bulls,
- (4) Alpacas,
- (5) Deer,
- (6) Elk,
- (7) Emus,
- (8) Equine,
- (9) Goats,
- (10) Llamas,
- (11) Non-adult beef cattle,
- (12) Non-adult buffalo or beefalo,

- (13) Non-adult dairy cattle,
- (14) Poultry,
- (15) Reindeer,
- (16) Sheep, and
- (17) Swine.

(c) Ineligible livestock for grazing and feed losses, and losses resulting from transporting water, include, but are not limited to:

(1) Livestock that were or would have been in a feedlot, on the beginning date of the eligible adverse weather or eligible loss condition, as a part of the normal business operation of the producer, as determined by FSA;

(2) Yaks;

(3) Ostriches;

(4) All beef and dairy cattle, and buffalo and beefalo that weighed less than 500 pounds on the beginning date of the eligible adverse weather or eligible loss condition;

(5) Any wild free roaming livestock, including horses and deer; and

(6) Livestock produced or maintained for reasons other than commercial use as part of a farming operation, including, but not limited to, livestock produced or maintained exclusively for recreational purposes, such as:

- (i) Roping,
- (ii) Hunting,
- (iii) Show,
- (iv) Pleasure,
- (v) Use as pets, or
- (vi) Consumption by owner.

(d) For death losses for livestock owners to be eligible, the livestock must meet all of the following conditions:

(1) Be alpacas, adult or non-adult dairy cattle, beef cattle, beefalo, buffalo, deer, elk, emus, equine, goats, llamas, poultry, reindeer, sheep, or swine, and meet all the conditions in paragraph (f) of this section.

(2) Be one of the following categories of animals for which calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

- (i) Adult beef bulls;
- (ii) Adult beef cows;
- (iii) Adult buffalo or beefalo bulls;
- (iv) Adult buffalo or beefalo cows;
- (v) Adult dairy bulls;
- (vi) Adult dairy cows;
- (vii) Alpacas;
- (viii) Chickens, broilers, pullets;
- (ix) Chickens, chicks;
- (x) Chickens, layers, roasters;
- (xi) Deer;
- (xii) Ducks;
- (xiii) Ducks, ducklings;
- (xiv) Elk;
- (xv) Emus;
- (xvi) Equine;
- (xvii) Geese, goose;
- (xviii) Geese, gosling;
- (xix) Goats, bucks;

(xx) Goats, nannies;
 (xxi) Goats, kids;
 (xxii) Llamas;
 (xxiii) Non-adult beef cattle;
 (xxiv) Non-adult buffalo or beefalo;
 (xxv) Non-adult dairy cattle;
 (xxvi) Reindeer;
 (xxvii) Sheep, ewes;
 (xxviii) Sheep, lambs;
 (xxix) Sheep, rams;
 (xxx) Swine, feeder pigs under 50

pounds;

(xxxi) Swine, sows, boars, barrows, gilts 50 to 150 pounds;

(xxxii) Swine, sows, boars, barrows, gilts over 150 pounds;

(xxxiii) Turkeys, poults; and

(xxxiv) Turkeys, toms, fryers, and roasters.

(e) Under ELAP, "contract growers" will only be deemed to include producers of livestock, other than feedlots, whose income is dependent on the actual weight gain and survival of the livestock. For death losses for contract growers to be eligible, the livestock must meet all of the following conditions:

(1) Be poultry or swine and meet all the conditions in paragraph (f) of this section.

(2) Be one of the following categories of animals for which calculations of eligibility for payments will be calculated separately for each contract grower with respect to each category:

- (i) Chickens, broilers, pullets;
- (ii) Chickens, layers, roasters;
- (iii) Geese, goose;
- (iv) Swine, boars, sows;
- (v) Swine, feeder pigs;
- (vi) Swine, lightweight barrows, gilts;
- (vii) Swine, sows, boars, barrows, gilts; and
- (viii) Turkeys, toms, fryers, and roasters.

(f) For livestock death losses to be considered eligible livestock for the purpose of generating payments under this subpart, livestock must meet all of the following conditions:

(1) They must have died:

- (i) On or after the beginning date of the eligible loss condition; and
- (ii) On or after October 1, 2011, and no later than 60 calendar days from the ending date of the eligible loss condition; and
- (iii) As a direct result of an eligible loss condition that occurs on or after October 1, 2011, and
- (iv) In the program year for which payment is being requested; and

(2) Been maintained for commercial use as part of a farming operation on the day the livestock died; and

(3) Before dying, not have been produced or maintained for reasons other than commercial use as part of a

farming operation, such non-eligible uses being understood to include, but not be limited to, any uses of wild free roaming animals or use of the animals for recreational purposes, such as pleasure, hunting, roping, pets, or for show.

(g) For honeybee colony, hive, and feed losses to be eligible, the honeybee colony must meet the following conditions:

(1) Been maintained for the purpose of producing honey or pollination for commercial use in a farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(2) Been physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition;

(3) Been a honeybee colony in which the participant has a risk in the honey production or pollination farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(4) Been a honeybee colony for which the producer had an eligible loss of a honeybee colony, honeybee hive, or honeybee feed; the feed must have been intended as feed for honeybees.

(h) For fish to be eligible to generate payments under ELAP, the fish must be produced in a controlled environment and the farm-raised fish must:

- (1) For feed losses:
 - (i) Be an aquatic species that is propagated and reared in a controlled environment;
 - (ii) Be maintained and harvested for commercial use as part of a farming operation; and
 - (iii) Be physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition.

(2) For death losses:

- (i) Be bait fish, game fish, or another aquatic species deemed eligible by the Deputy Administrator that are propagated and reared in a controlled environment;
- (ii) Been maintained for commercial use as part of a farming operation; and
- (iii) Been physically located in the county where the eligible loss adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition.

§ 1416.105 Eligible producers, owners, and contract growers.

(a) To be considered an eligible livestock producer for feed losses and

losses resulting from transporting water and gathering livestock to treat for cattle tick fever and to receive payments, the participant must have:

(1) Owned, cash-leased, purchased, entered into a contract to purchase, or been a contract grower of eligible livestock during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition; and

(2) Had a loss that is determined to be eligible as specified in § 1416.103(d) or (f).

(b) To be considered an eligible livestock producer for grazing losses and to receive payments, the participant must have:

(1) Owned, cash-leased, purchased, entered into a contract to purchase, or been a contract grower of eligible livestock during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition;

(2) Had a loss that is determined to be eligible as specified in § 1416.103(e);

(3) Had eligible livestock that would normally have been grazing the eligible grazing land or pastureland during the normal grazing period for the specific type of grazing land or pastureland for the county;

(4) Provided for the eligible livestock pastureland or grazing land, including cash leased pastureland or grazing land for eligible livestock that is physically located in the county where the eligible adverse weather or loss condition occurred during the normal grazing period for the county.

(c) For livestock death losses to be eligible the producer must have had a loss that is determined to be eligible as specified in § 1416.103(g) and in addition to other eligibility rules that may apply to be eligible as a:

(1) Livestock owner for the payment with respect to the death of an animal under this subpart, the applicant must have had legal ownership of the livestock on the day the livestock died and under conditions in which no contract grower could have been eligible for ELAP payment with respect to the animal. Eligible types of animal categories for which losses can be calculated for an owner are specified in § 1416.104(d).

(2) Contract grower for ELAP payment with respect to the death of an animal, the animal must be in one of the categories specified in § 1416.104(e), and the contract grower must have had:

(i) A written agreement with the owner of eligible livestock setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock;

(ii) Control of the eligible livestock on the day the livestock died; and

(iii) A risk of loss in the animal.

(d) To be considered an eligible honeybee producer, a participant must have an interest and risk in an eligible honeybee colony, as specified in § 1416.104(g), for the purpose of producing honey or pollination for commercial use as part of a farming operation and must have had a loss that is determined to be eligible as specified in § 1416.103(h) or (i).

(e) To be considered an eligible farm-raised fish producer for feed and death loss purposes, the participant must have produced eligible farm-raised fish, as specified in § 1416.104(h), with the intent to harvest for commercial use as part of a farming operation and must have had a loss that is determined to be eligible as specified in § 1416.103(h) or (j);

(f) A producer seeking payments must not be ineligible under the restrictions applicable to foreign persons contained in § 1416.3(b) and must meet all other requirements of subpart A of this part and other applicable USDA regulations.

§ 1416.106 Notice of loss and application process.

(a) To apply for ELAP, the participant that suffered eligible livestock, honeybee, or farm-raised fish losses must submit, to the FSA administrative county office that maintains the participant's farm records for the agricultural operation, the following:

(1) A notice of loss to FSA as specified in § 1416.107(a),

(2) A completed application as specified in § 1416.107(b) for one or both of the following:

(i) For livestock feed, grazing, and death losses and losses resulting from transporting water and gathering livestock to treat for cattle tick fever, a completed Emergency Loss Assistance for Livestock Application;

(ii) For honeybee feed, honeybee colony, honeybee hive, or farm-raised fish feed or death losses, a completed Emergency Loss Assistance for Honeybees or Farm-Raised Fish Application;

(3) A report of acreage, if applicable, as determined by the Deputy Administrator;

(4) A copy of the participant's grower contract, if the participant is a contract grower;

(5) Other supporting documents required for FSA to determine eligibility of the participant, livestock, honeybee colonies, hives, farm-raised fish, and loss;

(6) A farm operating plan, if a current farm operating plan is not already on file in the FSA county office; and

(7) A socially disadvantaged, limited resource and beginning farmer or rancher certification, if applicable.

(b) For 2014 and previous program years, available reliable or verifiable records must be provided only upon request by FSA. For 2015 and subsequent program years, for livestock grazing losses, participant must provide acceptable, verifiable, or reliable records that:

(1) Additional livestock feed was fed to sustain eligible livestock during an eligible adverse weather or loss condition, or

(2) Eligible livestock were removed from the eligible grazing land where the grazing loss occurred.

(c) For livestock, honeybee, or farm-raised fish feed losses, participant must provide acceptable, verifiable, or reliable records of the following as determined by the COC:

(1) Purchased feed intended as feed for livestock, honeybees, or farm-raised fish that was lost, or additional feed purchased above normal quantities to sustain livestock, honeybees, and farm-raised fish for a period of time, not to exceed 150 days, until additional feed becomes available, due to an eligible adverse weather or eligible loss condition. Verifiable or reliable records may include, but are not limited to, feed receipts, invoices, settlement sheets, warehouse ledger sheets, load summaries, register tapes, and contemporaneous records.

(2) Harvested feed intended as feed for livestock, honeybees, or farm-raised fish that was lost due to an eligible adverse weather or eligible loss condition. Verifiable or reliable records may include, but are not limited to, weight tickets, truck scale tickets, pick records, contemporaneous records used to verify that the crop was stored with the intent to feed the crop to livestock, honeybees, or farm-raised fish, and custom harvest documents that clearly identify the amount of feed produced from the applicable acreage.

(3) A loss resulting from the additional cost incurred for transporting livestock feed to eligible livestock due to an eligible adverse weather or eligible loss condition as determined by the Deputy Administrator, including, but not limited to, costs associated with equipment rental fees for hay lifts and snow removal. Verifiable or reliable records may include, but are not limited to, invoices, commercial receipts, load summaries, and contemporaneous records used to verify transportation cost of additional livestock feed.

(4) Additional cost of transporting water to eligible livestock due to an eligible adverse weather or eligible loss

condition as determined by the Deputy Administrator, including, but not limited to, costs associated with water transport equipment rental fees, labor, and contracted water transportation fees. Verifiable or reliable records include, but are not limited to, commercial receipts, contemporaneous records and invoices. Records must clearly indicate the dates on which water was transported and the total gallons transported.

(d) For eligible honeybee colony, honeybee hive and farm-raised fish losses, the participant must provide verifiable or reliable records of honeybee colony, hive, or farm-raised fish losses. For honeybee colony and hive losses, the participant must also provide verifiable or reliable records of inventory at the beginning of the program year, and records of purchase and sale transactions of honeybee colonies and hives throughout the program year. For farm-raised fish losses, the participant must also provide verifiable or reliable records of inventory on the beginning date and ending date of the eligible adverse weather or eligible loss condition. Verifiable and reliable records may include, but are not limited to, any combination of the following:

- (1) A report of acreage,
- (2) Loan records,
- (3) Private insurance documents,
- (4) Property tax records,
- (5) Sales and purchase receipts,
- (6) State colony registration documentation, and
- (7) Chattel inspections.

(e) For eligible livestock death losses that occur during the 2015 and subsequent program years, the participant must provide proof of livestock death, current physical location of livestock in inventory, and physical location of claimed livestock at the time of death, according to the documentation requirements for the Livestock Indemnity Program in § 1416.305(d) through (f).

(f) For eligible livestock death losses that occur during the 2012, 2013, and 2014 program years, the participant must provide proof of death and livestock inventory, according to the documentation requirements for the Livestock Indemnity Program in § 1416.305 (h).

(g) If verifiable or reliable records are not available or provided, as required in paragraphs (b) through (d) of this section, the COC may accept producer's certification of losses if similar producers have comparable losses, as determined by the COC and approved by the STC (FSA State Committee).

§ 1416.107 Notice of loss and application period.

(a) In addition to submitting an application for payment at the appropriate time, the participant that suffered eligible livestock, honeybee, or farm-raised fish losses that create or could create a claim for benefits must:

(1) For losses in program years 2012 and 2013, provide a separate notice of loss for each program year to FSA no later than August 1, 2014,

(2) For losses that occur in program year 2014, provide a notice of loss to FSA no later than November 1, 2014,

(3) For losses that occur in program year 2015 and subsequent years, the participant must provide a notice of loss to FSA within the earlier of:

(i) 30 calendar days of when the loss is apparent to the participant; or

(ii) November 1 following the program year for which benefits are being requested.

(4) Submit the notice of loss required in paragraph (a) of this section to the administrative FSA county office, unless additional options are otherwise provided for by the Deputy Administrator.

(b) In addition to the notices of loss required in paragraph (a) of this section, a participant must also submit a completed application for payment no later than:

(1) For the 2012 and 2013 program years, August 1, 2014, or

(2) For 2014 and subsequent program years, November 1 following the program year for which benefits are being requested.

§ 1416.108 Availability of funds.

Not more than \$20 million for fiscal year 2012 and each succeeding fiscal year will be approved for this program by the Secretary. Within that cap, the only funds that will be considered available to pay eligible losses will be that amount approved by the Secretary. Payments will not be made for claims arising out of a particular program year until, for all claims for that program year, the time for applying for a payment has passed. In the event that, within the limits of the funding made available by the Secretary within the statutory cap, approval of eligible applications would result in expenditures in excess of the amount available, FSA will prorate the available funds by a national factor to reduce the total expected payments to the amount made available by the Secretary. FSA will make payments based on the factor for the national rate determined by FSA. FSA will prorate the payments in such manner as it determines appropriate and reasonable. Claims that are unpaid or

prorated for a program year for any reason will not be carried forward for payment under other funds for later years or otherwise, but will be considered, as to any unpaid amount, void and nonpayable.

§ 1416.109 National Payment Rate.

(a) For an eligible livestock, honeybee, or farm-raised fish producer that meets the definition of beginning farmer or rancher, socially disadvantaged farmer or rancher, or limited resource farmer or rancher, payments calculated in §§ 1416.110 through 1416.112 will be based on a national payment rate of 90 percent.

(b) For an eligible livestock, honeybee, or farm-raised fish producer, payments calculated in §§ 1416.110(a), (b), (f), (g) and (l), 1416.111(a), and 1416.112(a), will be based on a national payment rate, to be determined by the Deputy Administrator, of not less than 60 percent and not more than 80 percent of the calculated payment.

(c) For an eligible livestock, honeybee, or farm-raised fish producer, payments calculated in §§ 1416.110(n), 1416.111(b) and (c), and 1416.112(b), will be based on a national payment rate, to be determined by the Deputy Administrator, of not less than 75 percent and not more than 80 percent of the calculated payment.

§ 1416.110 Livestock payment calculations.

(a) Livestock feed payments for an eligible livestock producer will be calculated based on losses for no more than 150 days during the program year. Payment calculations for feed losses will be based on a national payment rate, as specified in § 1416.109, multiplied by the producer's actual cost for:

(1) Livestock feed that was purchased forage or feedstuffs intended for use as feed for the participant's eligible livestock that was physically damaged or destroyed due to the direct result of an eligible adverse weather or eligible loss condition, as specified in § 1416.103(d)(1);

(2) Livestock feed that was mechanically harvested forage or feedstuffs intended for use as feed for the participant's eligible livestock that was physically damaged or destroyed after harvest due to the direct result of an eligible adverse weather or eligible loss condition, as specified in § 1416.103(d)(2);

(3) The additional cost of purchasing additional livestock feed above normal quantities, required to maintain the eligible livestock during an eligible adverse weather or eligible loss

condition until additional livestock feed becomes available, as specified in § 1416.103(d)(3); and

(4) The additional cost incurred for transporting livestock feed to eligible livestock due to an eligible adverse weather or eligible loss condition, as specified in § 1416.103(d)(4);

(b) Payments for losses resulting from the additional cost of transporting water to eligible livestock due to an eligible drought for no more 150 days during the program year, as specified in § 1416.103(d)(5) calculated based on a national payment rate, as determined in § 1416.109, multiplied by the lesser of either:

(1) The total value of the cost to transport water to eligible livestock for 150 days, based on the daily water requirements for the eligible livestock, or

(2) The total value of the cost to transport water to eligible livestock for the program year, based on the actual number of gallons of water the eligible producer transported to eligible livestock for the program year.

(c) The total value of the cost to transport water to eligible livestock for 150 days to be used in the calculation for paragraph (b)(1) of this section is equal to the product obtained by multiplying:

(1) The number of eligible livestock converted to an animal unit basis;

(2) The gallons of water required per animal unit for maintenance for one day, as determined by the Deputy Administrator;

(3) The national average price per gallon to transport water and any appropriate regional or local adjustments as recommended by the STC and determined by the Deputy Administrator; and

(4) 150 days.

(d) The total value of the cost to transport water to eligible livestock for the program year to be used in the calculation for paragraph (b)(2) of this section is equal to the product obtained by multiplying:

(1) Actual number of gallons of water transported by the eligible producer to eligible livestock in the program year; and

(2) The national average price per gallon to transport water and any appropriate regional or local adjustments as recommended by the STC and determined by the Deputy Administrator.

(e) The national average price per gallon to transport water to be used in the calculation for paragraphs (c)(3) and (d)(2) of this section is \$0.04, or such other price determined by the Deputy Administrator.

(f) Payments for an eligible livestock producer, for livestock losses resulting from the additional cost associated with gathering livestock to treat for cattle tick fever will be calculated for the actual number of livestock involved in each treatment. Total payments are equal to the sum of the following for each treatment:

- (1) The national payment rate, as determined in § 1416.109, times
- (2) The number of eligible livestock treated by APHIS for cattle tick fever, times
- (3) The average cost to gather livestock, per head, as established by the Deputy Administrator.

(g) Payments for an eligible livestock producer for grazing losses, except for losses due to wildfires on non-Federal land, will be calculated based on the applicable national payment rate, as determined in § 1416.109, multiplied by the lesser of:

(1) The total value of the feed cost for all covered livestock owned by the eligible livestock producer based on the number of days grazing was lost, not to exceed 150 days of daily feed cost for all eligible livestock, or

(2) The total value of grazing lost for all eligible livestock based on the normal carrying capacity, as determined by the Secretary, of the eligible grazing land of the eligible livestock producer for the number of grazing days lost, not to exceed 150 days of lost grazing.

(h) The total value of feed cost to be used in the calculation for paragraph (g)(1) of this section is based on the number of days grazing was lost and equals the product obtained by multiplying:

(1) A payment quantity equal to the feed grain equivalent, as determined in paragraph (i) of this section;

(2) A payment rate equal to the corn price per pound, as determined in paragraph (j) of this section;

(3) The number of all eligible livestock owned by the eligible producer converted to an animal unit basis;

(4) The number of days grazing was lost, not to exceed 150 calendar days during the normal grazing period for the specific type of grazing land; and

(5) The producer's ownership share in the livestock.

(i) The feed grain equivalent to be used in the calculation for paragraph (g)(1) of this section equals, in the case of:

(1) An adult beef cow, 15.7 pounds of corn per day, or

(2) Any other type or weight of livestock, an amount determined by the Secretary that represents the average number of pounds of corn per day

necessary to feed that specific type of livestock.

(j) The corn price per pound to be used in the calculation for paragraph (h)(2) of this section equals the quotient calculated as follows:

(1) The higher of:

(i) The national average corn price per bushel of corn for the 12-month period immediately preceding March 1 of the program year for which payments are calculated; or

(ii) The national average corn price per bushel of corn for the 24-month period immediately preceding March 1 of the program year for which payments are calculated;

(2) Divided by 56.

(k) The total value of grazing lost to be used in the calculation for paragraph (h)(2) of this section equals the product obtained by multiplying:

(1) A payment quantity equal to the feed grain equivalent of 15.7 pounds of corn per day;

(2) A payment rate equal to the corn price per pound, as determined in paragraph (j) of this section;

(3) The number of animal units the eligible livestock producer's grazing land or pastureland can sustain during the normal grazing period in the county for the specific type of grazing land or pastureland, in the absence of an eligible adverse weather or eligible loss condition, determined by dividing the:

(i) Number of eligible grazing land or pastureland acres of the specific type of grazing land or pastureland, by

(ii) The normal carrying capacity of the specific type of eligible grazing land or pastureland; and

(4) The number of days grazing was lost, not to exceed 150 calendar days during the normal grazing period for the specific type of grazing land.

(l) Payments for an eligible livestock producer for grazing losses due to a wildfire on non-Federal land will be calculated based on the applicable national payment rate, as determined in § 1416.109, multiplied by:

(1) The result of dividing:

(i) The number of acres of grazing land or pastureland acres affected by the fire, by

(ii) The normal carrying capacity of the specific type of eligible grazing land or pastureland; times

(2) The daily value of grazing as calculated by FSA under this section; times

(3) The number of days grazing was lost due to fire, not to exceed 180 calendar days;

(m) If a participant, during the normal grazing period for the eligible grazing land, claims both an eligible loss resulting from the additional cost of

purchasing additional livestock feed above normal quantities, as calculated in paragraph (a)(3) of this section, and an eligible grazing loss, as calculated in paragraphs (g) or (l) of this section, then the participant may receive no more than the larger of the value of the loss resulting from the:

(1) Additional cost of purchasing additional livestock feed, as calculated in paragraph (a)(3) of this section; or

(2) Grazing loss, as determined in:

(i) Paragraph (g) of this section, for losses due to an eligible adverse weather or eligible loss condition, except wildfires on non-Federal lands, or

(ii) Paragraph (l) of this section, for losses due to wildfires on non-Federal lands.

(n) Payments for an eligible livestock producer for eligible livestock death losses will be based on the applicable national payment rate, as determined in § 1416.109, multiplied by the result in paragraph (n)(1) of this section.

(1) Payments will be calculated by multiplying:

(i) The livestock payment rate for each livestock category, times

(ii) The number of eligible livestock that died in each category as a result of an eligible loss condition in excess of normal mortality, as determined in paragraph (n)(2) of this section;

(2) Normal mortality for each livestock category as determined by FSA on a statewide basis using local data sources including, but not limited to, State livestock organizations and the Cooperative Extension Service for the State.

(3) The livestock payment rates to be used in the calculation for paragraph (n)(1) of this section for eligible livestock owners and eligible livestock contract growers are:

(i) A livestock payment rate for eligible livestock owners that is based on the average fair market value of the applicable livestock as computed using nationwide prices for the previous program year unless some other price is approved by the Deputy Administrator.

(ii) A livestock payment rate for eligible livestock contract growers that is based on the relevant average income loss sustained by the contract grower, with respect to the dead livestock.

(o) Payments calculated in this section are subject to the adjustments and limits provided for in this part.

§ 1416.111 Honeybee payment calculations.

(a) An eligible honeybee producer may receive payments for eligible honeybee feed losses, as specified in § 1416.103(h), based on a national payment rate, as determined in

§ 1416.109, multiplied by the producer's actual cost for honeybee feed that was:

(1) Damaged or destroyed due to an eligible adverse weather or eligible loss condition, as specified in

§ 1416.103(h)(1); and

(2) Purchased, above normal, to maintain the honeybees during an eligible adverse weather or eligible loss condition until additional honeybee feed becomes available, as specified in § 1416.103(h)(2);

(b) An eligible honeybee producer may receive payments for eligible honeybee colony losses, as specified in § 1416.103(i), based on a national payment rate, as determined in § 1416.109(b), multiplied by:

(1) Average fair market value of the honeybee colonies as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator; and

(2) Number of eligible honeybee colonies that were damaged or destroyed due to an eligible adverse weather or eligible loss condition, in excess of normal honeybee mortality, as determined by the Deputy Administrator.

(c) An eligible honeybee producer may receive payments for eligible honeybee hive losses, as specified in § 1416.103(i), based on a national payment rate, as determined in § 1416.109, multiplied by:

(1) Average fair market value for honeybee hives as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator; and

(2) Number of honeybee hives that were damaged or destroyed due to an eligible adverse weather or eligible loss condition.

(d) Payments calculated in this section are subject to the adjustments and limits provided for in this part.

§ 1416.112 Farm-raised fish payment calculations.

(a) An eligible farm-raised fish producer may receive payments for fish feed losses due to an eligible adverse weather or eligible loss condition, as specified in § 1416.103(h), based on a national payment rate, as determined in § 1416.109, multiplied by the producer's actual cost for the fish feed that was:

(1) Damaged or destroyed due to an eligible adverse weather or eligible loss condition, as specified in § 1416.103(h)(1); and

(2) Purchased, above normal, to maintain the farm-raised fish during an eligible adverse weather or eligible loss condition until additional farm-raised fish feed becomes available, as specified in § 1416.103(h)(2).

(b) An eligible producer of farm-raised fish may receive payments for death losses of farm-raised fish due to an eligible adverse weather or eligible loss condition, as specified in § 1416.103(j), based on a national payment rate, as determined in § 1416.109, multiplied by:

(1) Average fair market value of the bait fish, game fish, or other aquatic species, as determined by the Deputy Administrator, that died as a direct result of an eligible adverse weather or eligible loss condition, as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator; and

(2) Number of eligible bait fish, game fish, or other aquatic species, as determined by the Deputy Administrator, that died as a result of an eligible adverse weather or loss condition, in excess of normal mortality, as determined by the Deputy Administrator.

(c) Payments calculated in this section or elsewhere with respect to ELAP are subject to the adjustments and limits provided for in this part and are also subject to the payment limitations and average adjusted gross income limitations that are contained in part 1400 of this chapter.

Subpart C—Livestock Forage Disaster Program

§ 1416.201 Applicability.

(a) This subpart establishes the terms and conditions under which the Livestock Forage Disaster Program (LFP) will be administered.

(b) Eligible livestock producers will be compensated for eligible grazing losses for covered livestock that occur due to a qualifying drought or fire that occurs:

(1) On or after October 1, 2011, and

(2) In the calendar year for which benefits are being requested.

§ 1416.202 Definitions.

The following definitions apply to this subpart and to the administration of LFP. The definitions in parts 718 of this title and 1400 of this chapter also apply, except where they conflict with the definitions in this section.

Adult beef bull means a male beef breed bovine animal that was at least 2 years old and used for breeding purposes on or before the beginning date of a qualifying drought or fire.

Adult beef cow means a female beef breed bovine animal that had delivered one or more offspring. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant on or before the beginning date of a qualifying drought or fire.

Adult buffalo and beefalo bull means a male animal of those breeds that was at least 2 years old and used for breeding purposes on or before the beginning date of a qualifying drought or fire.

Adult buffalo and beefalo cow means a female animal of those breeds that had delivered one or more offspring. A first-time bred buffalo or beefalo heifer is also considered an adult buffalo or beefalo cow if it was pregnant on or before the beginning date of a qualifying drought or fire.

Adult dairy bull means a male dairy breed bovine animal at least 2 years old used primarily for breeding dairy cows on or before the beginning date of a qualifying drought or fire.

Adult dairy cow means a female dairy breed bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant on or before the beginning date of a qualifying drought or fire.

Agricultural operation means a farming operation.

Application means the "Livestock Forage Disaster Program" form.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible livestock producer.

Contract means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock or livestock products.

Covered livestock means livestock of an eligible livestock producer that, during the 60 days prior to the beginning date of a qualifying drought or fire, the eligible livestock producer owned, leased, purchased, entered into a contract to purchase, was a contract grower of, or sold or otherwise disposed of due to a qualifying drought during the current production year. It includes livestock that the producer otherwise disposed of due to drought in one or both of the two production years immediately preceding the current production year as determined by the Secretary. Notwithstanding the foregoing portions of this definition, covered livestock for "contract growers" will not include livestock in feedlots. "Contract growers" under LFP will only include producers of livestock not in feedlots whose income is dependent on the actual weight gain and survival of the livestock.

Equine animal means a domesticated horse, mule, or donkey.

Farming operation means a business enterprise engaged in producing agricultural products.

Federal Agency means, with respect to the control of grazing land, an agency of the federal government that manages rangeland on which livestock is generally permitted to graze. For the purposes of this section, it includes, but is not limited to, the U.S. Department of the Interior (DOI) Bureau of Indian Affairs (BIA), DOI Bureau of Land Management (BLM), and USDA Forest Service (FS).

Goat means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats.

Non-adult beef cattle means a beef breed bovine animal that weighed 500 pounds or more on or before the beginning date of a qualifying drought or fire but that does not meet the definition of adult beef cow or bull.

Non-adult buffalo or beefalo means an animal of those breeds that weighed 500 pounds or more on or before the beginning date of a qualifying drought or fire, but does not meet the definition of adult buffalo or beefalo cow or bull.

Non-adult dairy cattle means a bovine animal, of a breed used for the purpose of providing milk for human consumption, that weighed 500 pounds or more on or before the beginning date of a qualifying drought or fire, but that does not meet the definition of adult dairy cow or bull.

Normal carrying capacity means, with respect to each type of grazing land or pastureland in a county, the normal carrying capacity that would be expected from the grazing land or pastureland for livestock during the normal grazing period in the county, in the absence of a drought or fire that diminishes the production of the grazing land or pastureland.

Normal grazing period means, with respect to a county, the normal grazing period during the calendar year with respect to each specific type of grazing land or pastureland in the county served by the applicable county committee.

Owner means one who had legal ownership of the livestock for which benefits are being requested during the 60 days prior to the beginning of a qualifying drought or fire.

Poultry means a domesticated chicken, turkey, duck, or goose. Poultry are further delineated by sex, age, and purpose of production, as determined by FSA.

Sheep means a domesticated, ruminant mammal of the genus *Ovis*.

Swine means a domesticated omnivorous pig, hog, or boar.

U.S. Drought Monitor is a system for classifying drought severity according to a range of abnormally dry to exceptional drought. It is a collaborative effort between Federal and academic partners, produced on a weekly basis, to synthesize multiple indices, outlooks, and drought impacts on a map and in narrative form. This synthesis of indices is reported by the National Drought Mitigation Center at <http://droughtmonitor.unl.edu>.

§ 1416.203 Eligible livestock producer.

(a) To be considered an eligible livestock producer, the eligible producer on a farm must:

(1) During the 60 days prior to the beginning date of a qualifying drought or fire, own, cash or share lease, or be a contract grower of covered livestock.

(2) Provide pastureland or grazing land for covered livestock, including cash-leased pastureland or grazing land, that is:

(i) Physically located in a county affected by a qualifying drought during the normal grazing period for the county, or

(ii) Rangeland managed by a Federal agency for which the otherwise eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock due to a qualifying fire.

(b) The eligible livestock producer must have certified that the livestock producer has suffered a grazing loss due to a qualifying drought or fire to be eligible for LFP payments.

(c) An eligible livestock producer does not include any owner, cash or share lessee, or contract grower of livestock that rents or leases pastureland or grazing land owned by another person on a rate-of-gain basis. (That is, where the lease or rental agreement calls for payment based in whole or in part on the amount of weight gained by the animals that use the pastureland or grazing land.)

(d) A producer seeking payment must not be prohibited from receiving these benefits as a result of the restrictions applicable to foreign persons contained in § 1416.3(b) and must meet all other requirements of subpart A of this part and other applicable USDA regulations.

(e) If a contract grower is an eligible livestock producer for covered livestock, the owner of that livestock is not eligible for payment.

§ 1416.204 Covered livestock.

(a) To be considered covered livestock for LFP payments, livestock must meet all the following conditions:

(1) Be adult or non-adult beef cattle, adult or non-adult beefalo, adult or non-

adult buffalo, adult or non-adult dairy cattle, alpacas, deer, elk, emus, equine, goats, llamas, poultry, reindeer, sheep, or swine;

(2) Be livestock that would normally have been grazing the eligible grazing land or pastureland:

(i) During the normal grazing period for the specific type of grazing land or pastureland for the county during the qualifying drought; or

(ii) When the Federal agency prohibited the eligible livestock producer from using the managed rangeland for grazing due to a fire;

(3) Be livestock that the eligible livestock producer:

(i) During the 60 days prior to the beginning date of a qualifying drought or fire:

- (A) Owned,
- (B) Leased,
- (C) Purchased,
- (D) Entered into a contract to purchase, or

(E) Was a contract grower of; or

(ii) Sold or otherwise disposed of due to qualifying drought during:

- (A) The current production year, or
- (B) 1 or both of the 2 production years immediately preceding the current production year;

(4) Been maintained for commercial use as part of the producer's farming operation on the beginning date of the qualifying drought or fire;

(5) Not have been produced and maintained for reasons other than commercial use as part of a farming operation. Such excluded uses include, but are not limited to, any uses of wild free roaming animals or use of the animals for recreational purposes, such as pleasure, roping, hunting, pets, or for show; and

(6) Not have been livestock that were or would have been in a feedlot, on the beginning date of the qualifying drought or fire, as a part of the normal business operation of the eligible livestock producer, as determined by the Secretary.

(b) The covered livestock categories are:

- (1) Adult beef cows or bulls,
- (2) Adult buffalo or beefalo cows or bulls,
- (3) Adult dairy cows or bulls,
- (4) Alpacas,
- (5) Deer,
- (6) Elk,
- (7) Emu,
- (8) Equine,
- (9) Goats,
- (10) Llamas,
- (11) Non-adult beef cattle,
- (12) Non-adult buffalo or beefalo,
- (13) Non-adult dairy cattle,
- (14) Poultry,

- (15) Reindeer,
- (16) Sheep, and
- (17) Swine.

(c) Livestock that are not covered include, but are not limited to:

(1) Livestock that were or would have been in a feedlot, on the beginning date of the qualifying drought or fire, as a part of the normal business operation of the eligible livestock producer, as determined by the Secretary;

(2) Yaks;

(3) Ostriches;

(4) All beef and dairy cattle, and buffalo and beefalo that weighed less than 500 pounds on the beginning date of the qualifying drought or fire;

(5) Any wild free roaming livestock, including horses and deer; and

(6) Livestock produced or maintained for reasons other than commercial use as part of a farming operation, including, but not limited to, livestock produced or maintained for recreational purposes, such as:

(i) Roping,

(ii) Hunting,

(iii) Show,

(iv) Pleasure,

(v) Use as pets, or

(vi) Consumption by owner.

§ 1416.205 Eligible grazing losses.

(a) A grazing loss due to drought is eligible for LFP only if the grazing loss for the covered livestock occurs on land that:

(1) Is native or improved pastureland with permanent vegetative cover, or

(2) Is planted to a crop planted specifically for the purpose of providing grazing for covered livestock, as reported on the producer's acreage report, including crops such as forage sorghum or small grains, but not including corn stalks or grain sorghum stalks; and

(3) Is grazing land or pastureland that is owned or leased by the eligible livestock producer that is physically located in a county that is, during the normal grazing period for the specific type of grazing land or pastureland for the county, rated by the U.S. Drought Monitor as having a:

(i) D2 (severe drought) intensity in any area of the county for at least 8 consecutive weeks during the normal grazing period for the specific type of grazing land or pastureland for the county, as determined by the Secretary, or

(ii) D3 (extreme drought) or D4 (exceptional drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland for the county, as determined by the Secretary. (As specified elsewhere in

this subpart, the amount of potential payment eligibility will be higher than under paragraph (a)(3)(i) of this section where the D4 trigger applies or where the D3 condition as determined by the Secretary lasts at least 4 weeks during the normal grazing period for the specific type of grazing land or pastureland for the county.)

(b) A grazing loss is not eligible for LFP if:

(1) The grazing loss due to drought on land used for haying or grazing under the Conservation Reserve Program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831–3835a), or

(2) The grazing loss occurs on irrigated land, unless the irrigated land has not been irrigated in the program year for which benefits are being requested due to lack of water that is beyond the participant's control.

(c) A grazing loss due to fire qualifies for LFP only if:

(1) The grazing loss occurs on rangeland that is managed by a Federal agency and

(2) The eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a fire.

§ 1416.205 Application for payment.

(a) To apply for LFP, the participant that suffered eligible grazing losses:

(1) On or after October 1, 2011, and on or before December 31, 2014, must submit a completed application for payment and required supporting documentation as specified in this part to the administrative FSA county office no later than January 30, 2015; or

(2) On or after January 1, 2015, must submit a completed application for payment and required supporting documentation to the administrative FSA county office no later than 30 calendar days after the end of the calendar year in which the grazing loss occurred.

(b) A participant must also provide a copy of the grower contract, if a contract grower, and other supporting documents required for determining eligibility as an applicant at the time the participant submits the completed application for payment. Supporting documents must include:

(1) Evidence of loss;

(2) Current physical location of livestock in inventory;

(3) Evidence that grazing land or pastureland is owned or leased;

(4) A report of acreage according to part 718 of this title for the grazing lands incurring losses for which assistance is being requested under this subpart;

(5) Adequate proof, as determined by FSA that the grazing loss:

(i) Was for the covered livestock;

(ii) If the loss of grazing occurred as the result of a fire, that the:

(A) Loss was due to a fire, and

(B) Participant was prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a fire;

(iii) Occurred on or after October 1, 2011; and

(iv) Occurred in the calendar year for which payments are being requested;

(6) A farm operating plan, if a current farm operating plan is not already on file in the FSA county office; and

(7) Any other supporting documentation as determined by FSA to be necessary to make a determination of eligibility of the participant. Supporting documents include, but are not limited to: Verifiable purchase and sales records; grower contracts; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency Records; National Guard records; written contracts; production records; private insurance documents; sales records; and similar documents determined acceptable to FSA.

(c) Data furnished by the participant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data, program benefits will not be approved or provided.

§ 1416.207 Payment calculation.

(a) An eligible livestock producer will be eligible to receive payments for grazing losses for qualifying drought as specified in § 1416.205(a), calculated as specified in paragraphs (e) or (f) of this section. Total LFP payments to an eligible livestock producer in a calendar year for grazing losses due to qualifying drought will not exceed 5 monthly payments for the same livestock. Payments calculated in this section or elsewhere with respect to LFP are subject to the adjustments and limits provided for in this part and are also subject to the payment limitations and average adjusted gross income provisions that are contained in subpart A of this part. Payment may only be made to the extent that eligibility is specifically provided for in this subpart. Hence, with respect to drought, payments will be made only as a "1-month" payment, a "3-month" payment, "4-month" payment, or a "5-month" payment based on the provisions of paragraphs (b) through (e) of this section.

(b) To be eligible to receive a 1-month payment, that is a payment equal to the

monthly feed cost as determined under paragraph (h) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D2 severe drought (intensity) in any area of the county for at least 8 consecutive weeks during the normal grazing period for the specific type of grazing land or pastureland in the county.

(c) To be eligible to receive a 3-month payment, that is a payment equal to three times the monthly feed cost as determined under paragraph (h) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D3 (extreme drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland for the county.

(d) To be eligible to receive a 4-month payment, that is a payment equal to four times the monthly feed cost as determined under paragraph (h) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D3 (extreme drought) intensity in any area of the county for at least 4 weeks (not necessarily consecutive weeks) during the normal grazing period for the specific type of grazing land or pastureland for the county, or is rated as having a D4 (exceptional drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland for the county.

(e) To be eligible to receive a 5-month payment, that is a payment equal to five times the monthly feed cost as determined under paragraph (h) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D4 (exceptional drought) in any area of the county for at least 4 weeks (not necessarily consecutive weeks) during the normal grazing period for the specific type of grazing land or pastureland for the county.

(f) The monthly payment rate for LFP for grazing losses due to a qualifying drought, except as specified in paragraph (g) of this section, will be equal to 60 percent of the lesser of:

(1) The monthly feed cost for all covered livestock owned or leased by the eligible livestock producer, as

determined in paragraph (h) of this section, or

(2) The monthly feed cost calculated by using the normal carrying capacity of the eligible grazing land of the eligible livestock producer, as determined in paragraph (j) of this section.

(g) An eligible livestock producer cannot receive more than a 5-month payment for the same covered livestock during the calendar year regardless of the number of drought intensity ratings the county receives; that is, the maximum payment an eligible livestock producer may receive under LFP in a calendar year cannot exceed 60 percent of 5 times the same covered livestock's monthly feed cost.

(h) In the case of an eligible livestock producer that sold or otherwise disposed of covered livestock due to a qualifying drought in 1 or both of the 2 production years immediately preceding the current production year, the payment rate is 80 percent of the monthly payment rate calculated in paragraph (f) of this section.

(i) The monthly feed cost for covered livestock equals the product obtained by multiplying:

(1) 30 days;

(2) A payment quantity equal to the amount referred to in paragraph (h) of this section as the "feed grain equivalent", as determined under paragraph (h) of this section; and

(3) A payment rate equal to the corn price per pound, as determined in paragraph (i) of this section.

(j) The feed grain equivalent equals, in the case of:

(1) An adult beef cow, 15.7 pounds of corn per day or

(2) In the case of any other type or weight of covered livestock, an amount determined by the Secretary that represents the average number of pounds of corn per day necessary to feed that specific type of livestock.

(k) The corn price per pound equals the quotient calculated as follows:

(1) The higher of:

(i) The national average corn price per bushel for the 12-month period immediately preceding March 1 of the calendar year for which LFP payment is calculated, or

(ii) The national average corn price per bushel for the 24-month period immediately preceding March 1 of the calendar year for which LFP payment is calculated,

(2) Divided by 56.

(l) The monthly feed cost using the normal carrying capacity of the eligible grazing land equals the product obtained by multiplying:

(1) 30 days;

(2) A payment quantity equal to the feed grain equivalent of 15.7 pounds of corn per day;

(3) A payment rate equal to the corn price per pound, as determined in paragraph (i) of this section; and

(4) The number of animal units the eligible livestock producer's grazing land or pastureland can sustain during the normal grazing period in the county for the specific type of grazing land or pastureland, in the absence of a drought or fire, determined by dividing the:

(i) Number of eligible grazing land or pastureland acres of the specific type of grazing land or pastureland, by

(ii) The normal carrying capacity of the specific type of eligible grazing land or pastureland as determined under this subpart.

(m) An eligible livestock producer will be eligible to receive payments for grazing losses due to a fire as specified in § 1416.205(c):

(1) For the period, subject to paragraph (l)(2) of this section:

(i) Beginning on the date on which the Federal Agency prohibits the eligible livestock producer from using the managed rangeland for grazing, and

(ii) Ending on the earlier of the last day of the Federal lease of the eligible livestock producer or the day that would make the period a 180 day period.

(2) For grazing losses that occur on not more than 180 days per calendar year.

(3) For 50 percent of the monthly feed cost, as determined under § 1416.208(i), pro-rated to a daily rate, for the total number of livestock covered by the Federal lease of the eligible livestock producer.

Subpart D—Livestock Indemnity Program

§ 1416.301 Applicability.

(a) This subpart establishes the terms and conditions under which the Livestock Indemnity Program (LIP) will be administered under Title I of the 2014 Farm Bill (Pub. L. 113-79).

(b) Eligible livestock owners and contract growers will be compensated in accordance with § 1416.306 for eligible livestock deaths in excess of normal mortality that occurred in the calendar year for which benefits are being requested as a direct result of an eligible adverse weather event or attacks by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators. The eligible adverse weather event, is one, as determined by the Secretary, that occurs in the program year that directly results in the death of

livestock despite the livestock producer's performance of expected and normal preventative or corrective measures and good farming practices. Because feed can be purchased or otherwise obtained in the event of a drought, drought is not an eligible adverse weather event except when anthrax, which is exacerbated by drought, causes the death of eligible livestock.

§ 1416.302 Definitions.

The following definitions apply to this subpart. The definitions in parts 718 of this title and 1400 of this chapter also apply, except where they conflict with the definitions in this section.

Actual livestock beginning inventory means the actual livestock beginning inventory per calendar year for calves or lambs that is calculated from the verifiable or reliable records of death, birthing, docking, inventory, and sales in an open range operation.

Adjusted livestock beginning inventory means the livestock beginning inventory history for calves or lambs on the open range that will be adjusted during the base period for years for which continuous actual livestock beginning inventory history records are not provided.

Adult beef bull means a male beef breed bovine animal that was at least 2 years old and used for breeding purposes before it died.

Adult beef cow means a female beef breed bovine animal that had delivered one or more offspring before dying. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant at the time it died.

Adult buffalo and beefalo bull means a male animal of those breeds that was at least 2 years old and used for breeding purposes before it died.

Adult buffalo and beefalo cow means a female animal of those breeds that had delivered one or more offspring before dying. A first-time bred buffalo or beefalo heifer is also considered an adult buffalo or beefalo cow if it was pregnant at the time it died.

Adult dairy bull means a male dairy breed bovine animal at least 2 years old used primarily for breeding dairy cows before it died.

Adult dairy cow means a female bovine dairy breed animal used for the purpose of providing milk for human consumption that had delivered one or more offspring before dying. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant at the time it died.

Agricultural operation means a farming operation.

Application means the "Livestock Indemnity Program" form.

Approved livestock beginning inventory means the approved livestock beginning inventory for calves or lambs on the open range, calculated by the sum of the yearly actual and transitional livestock beginning inventory history divided by the number of years of livestock beginning inventory history.

Base period means the five consecutive calendar years immediately preceding the calendar year of the LIP application for which the approved livestock beginning inventory is being established for the open range calf or lambing operation.

Buck means a male goat.

CCC means Commodity Credit Corporation.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer.

Continuous livestock beginning inventory reports means livestock beginning inventory reports submitted by a producer for each calendar year that the producer was involved in the livestock open range operation.

Contract means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock or livestock products.

Cow/Ewe Livestock Beginning Inventory History means, the applicable calendar year cow or ewe verifiable livestock beginning inventory records provided to FSA by the open range livestock operation to be used in calculating the transitional livestock beginning inventory history.

Deputy Administrator or DAFP means the Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or the designee.

Equine animal means a domesticated horse, mule, or donkey.

Eligible adverse weather event means an extreme or abnormal damaging weather event that is not expected to occur during the loss period for which it occurred, which results in eligible livestock death losses in excess of normal mortality. Eligible adverse weather events include, but are not limited to, as determined by the Deputy Administrator or designee, earthquake; lightning; tornado; tropical storm; typhoon; vog if directly related to a volcanic eruption; winter storm if the winter storm last for three consecutive days and is accompanied by high winds, freezing rain or sleet, heavy snowfall,

and extremely cold temperatures; hurricanes; floods; blizzards; wildfires; extreme heat; extreme cold; and anthrax; and disease if exacerbated by another eligible adverse weather event.

Ewe means a female sheep.

Farming operation means a business enterprise engaged in producing agricultural products.

FSA means the Farm Service Agency.

Goat means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats. Goats are further defined by sex (bucks and nannies) and age (kids).

Kid means a goat less than 1 year old.

Lamb means a sheep less than 1 year old.

Livestock beginning inventory history (LBIH) means a minimum of four, up to a maximum of five, calendar years of actual and transitional beginning inventory records used to calculate the approved livestock beginning inventory history for a calf or lamb open range livestock operation.

LBIH reporting date means the LBIH reporting date for which the reports will be accepted for inclusion in the base period for the current calendar year.

Livestock inventory report means a written record showing the producer's annual inventory used to determine the livestock beginning inventory history for LIP purposes for the open range calf or lamb open range livestock operation. The report contains livestock beginning inventory history by open range livestock operation by livestock type or kind.

Livestock owner means one having legal ownership of the livestock for which benefits are being requested on the day such livestock died.

Nanny means a female goat.

Non-adult beef cattle means a beef breed bovine animal that does not meet the definition of adult beef cow or bull. Non-adult beef cattle are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died.

Non-adult buffalo or beefalo means an animal of those breeds that does not meet the definition of adult buffalo or beefalo cow or bull. Non-adult buffalo or beefalo are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time of death.

Non-adult dairy cattle means a dairy breed bovine animal, of a breed used for the purpose of providing milk for human consumption, that do not meet the definition of adult dairy cow or bull. Non-adult dairy cattle are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died.

Normal mortality means the numerical amount, computed by a percentage, as established for the area by the FSA State Committee, of expected livestock deaths, by category, that normally occur during a calendar year for a producer.

Open range operation means livestock production that takes place on large parcels of land where the livestock are not gathered into pens, sheds, or other small areas such that accurate overall inventory and resulting death tallies cannot be completed without a round-up, as determined by the Deputy Administrator.

Poultry means domesticated chickens, turkeys, ducks, and geese. Poultry are further delineated by sex, age, and purpose of production as determined by FSA.

Ram means a male sheep.

Secretary means the Secretary of Agriculture or a designee of the Secretary.

Sheep means a domesticated, ruminant mammal of the genus *Ovis*. Sheep are further defined by sex (rams and ewes) and age (lambs) for purposes of dividing into categories for loss calculations.

State committee, State office, county committee, or county office means the respective FSA committee or office.

Swine means a domesticated omnivorous pig, hog, or boar. Swine for purposes of dividing into categories for loss calculations are further delineated by sex and weight as determined by FSA.

Transitional livestock beginning inventory history for offspring (calves/lambs) means an estimated livestock beginning inventory history, generally determined by multiplying the livestock open range operation's beginning cow or ewe livestock beginning inventory history by the national established birthing rate percentage of 90 percent for calves and 160 percent for lambs. The Deputy Administrator has the authority to make adjustments as necessary. It is to be used in the transitional livestock beginning inventory history calculation process when less than 4 consecutive calendar years of actual livestock beginning inventory history is available.

United States means all fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

Winter storm means a storm that is severe as to cause fatal injury to livestock and lasts in duration for at least three consecutive days and is accompanied by high winds, freezing

rain or sleet, heavy snowfall, and extremely cold temperatures.

§ 1416.303 Eligible owners and contract growers.

(a) In addition, to other eligibility rules that may apply, to be eligible as a:

(1) Livestock owner for benefits with respect to the death of an animal under this subpart, the applicant must have had legal ownership of the eligible livestock on the day the livestock died and under conditions in which no contract grower could have been eligible for benefits with respect to the animal. Eligible types of animal categories for which losses can be calculated for an owner are specified in § 1416.304(a).

(2) Contract grower for benefits with respect to the death of an animal, the animal must be in one of the categories specified on § 1416.304(b), and the contract grower must have had,

(i) A written agreement with the owner of eligible livestock setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock;

(ii) Control of the eligible livestock on the day the livestock died; and

(iii) A risk of loss in the animal.

(b) A producer seeking payment must not be ineligible under the restrictions applicable to foreign persons contained in § 1416.3(b) and must meet all other requirements of subpart A of this part and other applicable USDA regulations.

§ 1416.304 Eligible livestock.

(a) To be considered eligible livestock for livestock owners, the kind of livestock must be alpacas, adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, elk, emus, equine, llamas, sheep, goats, swine, poultry, deer, or reindeer and meet all the conditions in paragraph (c) of this section.

(b) To be considered eligible livestock for contract growers, the kind of livestock must be poultry or swine and meet all the conditions in paragraph (c) of this section.

(c) To be considered eligible livestock for the purpose of generating payments under this subpart, livestock must meet all of the following conditions:

(1) Died as a direct result of an eligible adverse weather event or attacks by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators:

(i) On or after October 1, 2011,

(ii) No later than 60 calendar days from the ending date of the eligible adverse weather event, or the date of the attack by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators, and

(iii) In the calendar year for which benefits are being requested;

(2) Been maintained for commercial use as part of a farming operation on the day they died; and

(3) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, such non-eligible uses being understood to include, but not be limited to, any uses of wild free roaming animals or use of the animals for recreational purposes, such as pleasure, hunting, roping, pets, or for show.

(d) The following categories of animals owned by a livestock owner are eligible livestock and calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

- (1) Adult beef bulls;
- (2) Adult beef cows;
- (3) Adult buffalo or beefalo bulls;
- (4) Adult buffalo or beefalo cows;
- (5) Adult dairy bulls;
- (6) Adult dairy cows;
- (7) Alpacas;
- (8) Chickens, broilers, pullets;
- (9) Chickens, chicks;
- (10) Chickens, layers, roasters;
- (11) Deer;
- (12) Ducks;
- (13) Ducks, ducklings;
- (14) Elk;
- (15) Emus;
- (16) Equine;
- (17) Geese, goose;
- (18) Geese, gosling;
- (19) Goats, bucks;
- (20) Goats, nannies;
- (21) Goats, kids;
- (22) Llamas;
- (23) Non-adult beef cattle;
- (24) Non-adult buffalo or beefalo;
- (25) Non-adult dairy cattle;
- (26) Reindeer;
- (27) Sheep, ewes;
- (28) Sheep, lambs;
- (29) Sheep, rams;
- (30) Swine, feeder pigs under 50

pounds;

- (31) Swine, sows, boars, barrows, gilts 50 to 150 pounds;

- (32) Swine, sows, boars, barrows, gilts over 150 pounds;

- (33) Turkeys, poults; and

- (34) Turkeys, toms, fryers, and roasters.

(e) The following categories of animals are eligible livestock for contract growers and calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

- (1) Chickens, broilers, pullets;
- (2) Chickens, layers, roasters;
- (3) Geese, goose;
- (4) Swine, boars, sows;

(5) Swine, feeder pigs;
 (6) Swine, lightweight barrows, gilts;
 (7) Swine, sows, boars, barrows, gilts;
 and

(8) Turkeys, toms, fryers, and roasters.

(f) The following livestock are considered to be ineligible livestock for the purpose of generating payments under this subpart:

(1) Livestock that have died due to disease where the disease was not exacerbated by an eligible adverse weather event. Diseases that can be prevented by implementing and following acceptable management practices, such as vaccination, are not considered an eligible livestock death loss under LIP. Livestock that die as a result of the disease are not eligible for payment to be generated under LIP when the disease has been determined to not have been exacerbated by an eligible adverse weather event and vaccination or acceptable management practices can or have been implemented to prevent such disease. Before COC approves LIP applications for payment for disease, COC through STC, must request determination from the Deputy Administrator or designee whether the specific disease is a disease that is exacerbated by an eligible adverse weather event.

§ 1416.305 Application process.

(a) A producer or contract grower that suffered livestock losses that creates or could create a claim for benefits must:

(1) For losses on or after October 1, 2011, and before January 1, 2015, provide a notice of loss and application for payment to FSA no later than January 30, 2015.

(2) For 2015 calendar year and subsequent year losses, provide a notice of loss to FSA within the earlier of:

(i) 30 calendar days of when the loss of livestock is apparent to the participant or

(ii) 30 calendar days after the end of the calendar year in which the loss of livestock occurred.

(3) The participant must submit the notice of loss required in paragraphs (a)(1) and (2) of this section to the FSA administrative county office that maintains the participant's farm records for the agricultural operation.

(b) In addition to the notices of loss required in paragraph (a)(2) of this section, a participant must also submit a completed application for payment no later than 30 calendar days after the end of the calendar year in which the loss of livestock occurred.

(c) A participant must also provide a copy of the grower contract, if a contract grower, and other supporting documents required for determining

eligibility as an applicant at the time the participant submits the completed application for payment. Supporting documents must include:

(1) Evidence of loss,

(2) Current physical location of livestock in inventory,

(3) Physical location of claimed livestock at the time of death,

(4) Inventory numbers and other inventory information necessary to establish actual mortality as required by FSA,

(5) A farm operating plan, if a current farm operating plan is not already on file in the FSA county office,

(6) Documentation of the adverse weather event from an official weather reporting data source that is determined by FSA to be reputable and available in the public domain such as, but not limited to, NOAA, from which State and County FSA Offices can validate the adverse weather event occurred, and

(7) Documentation to substantiate eligible animal attacks by animals or avian predators showing confirmation of the eligible animal or avian attack obtained from a source such as, but not limited to, the following:

(i) APHIS,

(ii) State level Department of Natural Resources, or

(iii) Other sources or documentation, as determined by the Deputy Administrator.

(8) The livestock producer may supplement additional documentation to support eligible adverse weather events and eligible attacks by animal or avian predators, as determined by the Deputy Administrator.

(d) The participant must provide adequate proof that the death of the eligible livestock occurred as a direct result of an eligible adverse weather event or attacks by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators, in the calendar year for which benefits are requested. The quantity and kind of livestock that died as a direct result of the eligible adverse weather event during the calendar year for which benefits are being requested may be documented by: Purchase records; veterinarian records; bank or other loan papers; rendering-plant truck receipts; Federal Emergency Management Agency records; National Guard records; written contracts; production records; Internal Revenue Service records; property tax records; private insurance documents; and other similar verifiable documents as determined by FSA.

(e) If adequate verifiable proof of death documentation is not available,

the participant may provide reliable records, in conjunction with verifiable beginning and ending inventory records, as proof of death. Reliable records may include contemporaneous producer records, dairy herd improvement records, brand inspection records, vaccination records, dated pictures, and other similar reliable documents as determined by FSA.

(f) Certification of livestock deaths by third parties may be accepted if verifiable beginning and ending inventory data is available only if verifiable proof of death records or reliable proof of death records in conjunction with verifiable beginning and ending inventory records are not available and both of the following conditions are met:

(1) The livestock owner or livestock contract grower, as applicable, certifies in writing:

(i) That there is no other verifiable or reliable documentation of death available;

(ii) The number of livestock, by category identified in this subpart and by FSA were in inventory at the time the eligible adverse weather event occurred;

(iii) The physical location of the livestock, by category, in inventory when the deaths occurred; and

(iv) Other details required for FSA to determine the certification acceptable; and

(2) The third party is an independent source who is not affiliated with the farming operation such as a hired hand and is not a "family member," defined as a person whom a member in the farming operation or their spouse is related as lineal ancestor, lineal descendant, sibling, spouse, and provides their telephone number, address, and a written statement containing specific details about:

(i) Their knowledge of the livestock deaths;

(ii) Their affiliation with the livestock owner;

(iii) The accuracy of the deaths claimed by the livestock owner or contract grower including, but not limited to, the number and kind or type of the participant's livestock that died because of the eligible adverse weather event; and

(iv) Other information required by FSA to determine the certification acceptable.

(v) Data furnished by the participant and the third party will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data program benefits will not be approved or provided.

(g) Calf and lamb open range livestock operations may provide proof of death by using the livestock beginning inventory history for reporting losses.

(1) For 2015 and subsequent calendar years, livestock inventory reports must be provided to the local county FSA office no later than 30 calendar days after the end of the calendar year for which reports will be accepted for inclusion in the base period for the current calendar year. For the 2011 through 2014 calendar years, producers have until January 30, 2015, to provide the applicable livestock inventory reports. The STC may approve a waiver of the reporting deadline if a participant has not previously received benefits under this method.

(i) Livestock inventory reports must provide an accurate account of livestock beginning inventory for the open range livestock type or kind and must be supported by written verifiable records such as but not limited to: Docking records, sales receipts, shearing records, shipping records, bank records, veterinarian records, IRS records, or other records approved by COC. For purposes of determining beginning livestock inventory, livestock inventory reports may require adjustment by COC, not to exceed normal mortality, for when loss occurs at different points during the growing season (for example, inventories from docking may need little to no adjustment, but sales records at the end of the growing season may require an adjustment to account for a full years of normal mortality).

(ii) The open range livestock operation must certify to the accuracy of the information.

(2) The open range livestock operation is solely responsible for the timely submission and certification of accurate, complete livestock beginning inventory to the county FSA office. Livestock beginning inventory records must be provided for all livestock type or kind.

(i) Records may be requested by the applicable COC or STC, on behalf of FSA. The open range livestock operation must provide such records upon request.

(ii) The COC will explain the procedure for the livestock beginning inventory history to open range livestock operation. COC will determine the livestock beginning inventory history in accordance with § 1416.305(g).

(iii) COC will determine if the livestock beginning inventory records are acceptable and calculate the approved livestock beginning inventory history.

(3) The livestock beginning inventory history is calculated utilizing a

minimum of 4 years of data and will be updated each subsequent inventory year. The transitional livestock beginning inventory history may contain a maximum of the 4 most recent calendar years and may include actual and transitional livestock beginning inventories. Transitional livestock beginning inventory history will only be used when less than 4 years of actual records are available. Appropriate adjustments to livestock beginning inventory history may be made to account for variations in ewe and cow stocking levels during the period covered by the history.

(4) The open range livestock operation is required to provide beginning livestock inventory records to determine the livestock beginning inventory history, if livestock beginning inventory records are available.

(i) If no acceptable livestock beginning inventory records are available for either calves or lambs, calculate the 4 transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the open range livestock operation times the applicable cow or ewe livestock beginning inventory history times 65 percent.

(ii) If acceptable livestock beginning inventory records are provided for only one of the most recent 5 calendar years, calculate the 3 transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the open range livestock operation times the applicable cow or ewe livestock beginning inventory history times 80 percent.

(iii) If acceptable livestock beginning inventory records are provided for only 2 of the most recent 5 calendar years, calculate the 2 transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the open range livestock operation times the applicable cow or ewe livestock beginning inventory history times 90 percent.

(iv) If acceptable livestock beginning inventory records are provided for only 3 of the most recent 5 calendar years, calculate the one transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the open range livestock operation times the applicable cow or ewe livestock beginning inventory history times 100 percent.

(v) If acceptable livestock beginning inventory history records containing information for 4 or more of the most

recent calendar years are provided, calculate the livestock beginning inventory history by taking a simple average of the actual livestock beginning inventory histories.

(h) For livestock death losses that occurred on or after October 1, 2011, and before January 1, 2015, livestock producers who cannot meet the criteria in paragraphs (d) through (g) of this section may provide acceptable documentation of proof of death and inventories according to the requirements in this paragraph (h).

(1) Documents that may provide acceptable evidence of death include, but are not limited to, any or a combination of the following:

(i) Contemporaneous producer records existing at the time of the event, such as, but not limited to: Personal diary listing births, deaths, unaccounted animals, and date of such event; personal diary of cowboy or herdsman showing animal care; calendar listing births, deaths, unaccounted animals, date livestock turned out on pasture; pictures with a date; brand inspection records; dairy herd improvement records; ear tag documentation or records; and other similar reliable documents. COC may require the livestock producer to file a third-party certification to support the contemporaneous records.

(ii) Third-party certification according to paragraph (f) of this section, except that the third-party is not required to certify to the specific number of livestock.

(2) Documents that may provide acceptable evidence of livestock inventory include, but are not limited to, any or a combination of the following:

- (i) Veterinary records;
- (ii) Canceled check documentation;
- (iii) Balance sheets;
- (iv) Inventory records used for tax purposes;
- (v) Loan records;
- (vi) Bank statements;
- (vii) Farm credit balance sheets;
- (viii) Property tax records;
- (ix) Trucking and/or livestock hauling records;
- (x) Brand inspection records;
- (xi) Sales and purchase receipts;
- (xii) Private insurance documents;
- (xiii) Chattel inspections;
- (xiv) IRS records such schedule F and depreciation schedules;
- (xv) Docking records;
- (xvi) Shearing records;
- (xvii) Ear tag records.

(3) COC may compare livestock numbers and carrying capacity to acreage reports filed by a producer during the calendar year of loss to determine reasonableness.

(4) COC must review all documentation provided by the producer and based upon review of the documentation provided by the producer and personal knowledge of the producer's livestock operation, determine whether the number of death losses reported by the livestock producer are reasonable and whether the application for payment should be approved.

§ 1416.306 Payment calculation.

(a) Under this subpart, separate payment rates for eligible livestock owners and eligible livestock contract growers are specified in paragraphs (b) and (c) of this section, respectively. Payments for LIP are calculated by multiplying the national payment rate for each livestock category by the number of eligible livestock in excess of normal mortality in each category that died as a result of an eligible adverse weather event. Normal mortality for each livestock category will be determined by FSA on a State-by-State basis using local data sources including, but not limited to, State livestock organizations and the Cooperative Extension Service for the State. Adjustments will be applied as specified in paragraph (d) of this section.

(b) The LIP national payment rate for eligible livestock owners is based on 75 percent of the average fair market value of the applicable livestock as computed using nationwide prices for the previous calendar year unless some other price is approved by the Deputy Administrator.

(c) The LIP national payment rate for eligible livestock contract growers is based on 75 percent of the average income loss sustained by the contract grower with respect to the dead livestock.

(d) The LIP payment calculated for eligible livestock contract growers will be reduced by the amount the participant received from the party who contracted with the producer to raise the livestock for the loss of income from the dead livestock.

Subpart E—Tree Assistance Program

§ 1416.400 Applicability.

(a) This subpart establishes the terms and conditions under which the Tree Assistance Program (TAP) will be administered under Title I of the Agricultural Act of 2014 (Pub. L. 113–79, the 2014 Farm Bill).

(b) Eligible orchardists and nursery tree growers will be compensated as specified in § 1416.406 for eligible tree, bush, and vine losses in excess of 15 percent mortality, or, where applicable,

damage in excess of 15 percent, adjusted for normal mortality and normal damage, that occurred in the calendar year (or loss period in the case of plant disease) for which benefits are being requested and as a direct result of a natural disaster.

§ 1416.401 Administration.

The program will be administered as specified in § 1416.2 and in this subpart.

§ 1416.402 Definitions.

The following definitions apply to this subpart. The definitions in parts 718 of this title and 1400 of this chapter also apply, except where they conflict with the definitions in this section.

Bush means, a low, branching, woody plant, from which at maturity of the bush, an annual fruit or vegetable crop is produced for commercial purposes, such as a blueberry bush. The definition does not cover plants that produce a bush after the normal crop is harvested such as asparagus.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer.

County committee means the respective FSA committee.

County office means the FSA or U.S. Department of Agriculture (USDA) Service Center that is responsible for servicing the farm on which the trees, bushes, or vines are located.

Cutting means a piece of a vine which was planted in the ground to propagate a new vine for the commercial production of fruit, such as grapes, kiwi fruit, passion fruit, or similar fruit.

Deputy Administrator or DAFP means the Deputy Administrator for Farm Programs, FSA, USDA, or the designee.

Eligible nursery tree grower means a person or legal entity that produces nursery, ornamental, fruit, nut, or Christmas trees for commercial sale.

Eligible orchardist means a person or legal entity that produces annual crops from trees, bushes, or vines for commercial purposes.

FSA means the Farm Service Agency.

Lost means, with respect to the extent of damage to a tree or other plant, that the plant is destroyed or the damage is such that it would, as determined by FSA, be more cost effective to replace the tree or other plant than to leave it in its deteriorated, low-producing state.

Natural disaster means plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other natural occurrence of such magnitude or severity so as to be considered disastrous, as determined by the Deputy Administrator.

Normal damage means the percentage, as established for the area

by the FSA State Committee, of trees, bushes, or vines in the individual stand that would normally be damaged during a calendar year for a producer.

Normal mortality means percentage, as established for the area by the FSA State Committee, of expected lost trees, bushes, or vines in the individual stand that normally occurs during a calendar year for a producer. This term refers to the number of whole trees, bushes, or vines that are destroyed or damaged beyond rehabilitation. Mortality does not include partial damage such as lost tree limbs.

Seedling means an immature tree, bush, or vine that was planted in the ground or other growing medium to grow a new tree, bush, or vine for commercial purposes.

Stand means a contiguous acreage of the same type of trees (including Christmas trees, ornamental trees, nursery trees, and potted trees), bushes (including shrubs), or vines.

State committee means the respective FSA committee.

Tree means a tall, woody plant having comparatively great height, and a single trunk from which an annual crop is produced for commercial purposes, such as a maple tree for syrup, papaya tree, or orchard tree. Trees used for pulp or timber are not considered eligible trees under this subpart.

Vine means a perennial plant grown under normal conditions from which an annual fruit crop is produced for commercial market for human consumption, such as grape, kiwi, or passion fruit, and that has a flexible stem supported by climbing, twining, or creeping along a surface. Perennials that are normally propagated as annuals such as tomato plants, biennials such as the plants that produce strawberries, and annuals such as pumpkins, squash, cucumbers, watermelon, and other melons, are excluded from the term vine in this subpart.

§ 1416.403 Eligible losses.

(a) To be considered an eligible loss under this subpart:

(1) Eligible trees, bushes, or vines must have been lost or damaged as a result of natural disaster as determined by the Deputy Administrator;

(2) The individual stand must have sustained a mortality loss or damage loss, as the case may be, in excess of 15 percent after adjustment for normal mortality or damage, to be determined based on:

(i) Each eligible disaster event, except for losses due to plant disease;

(ii) For plant disease, the time period, as determined by the Deputy

Administrator, for which the stand is infected.

(3) The loss could not have been prevented through reasonable and available measures; and

(4) The trees, bushes, or vines, in the absence of a natural disaster, would not normally have required rehabilitation or replanting within the 12-month period following the loss.

(b) The damage or loss must be visible and obvious to the county committee representative. If the damage is no longer visible, the county committee may accept other evidence of the loss as it determines is reasonable.

(c) The county committee may require information from a qualified expert, as determined by the county committee, to determine extent of loss in the case of plant disease or insect infestation.

(d) The Deputy Administrator will determine the types of trees, bushes, and vines that are eligible.

(e) An individual stand that did not sustain a sufficient loss as specified in paragraph (a)(2) of this section is not eligible for payment, regardless of the amount of loss sustained.

§ 1416.404 Eligible orchardists and nursery tree growers.

(a) To be eligible for TAP payments, the eligible orchardist or nursery tree grower must:

(1) Have planted, or be considered to have planted (by purchase prior to the loss of existing stock planted for commercial purposes) trees, bushes, or vines for commercial purposes, or have a production history, for commercial purposes, of planted or existing trees, bushes, or vines;

(2) Have suffered eligible losses of eligible trees, bushes, or vines occurring on or after October 1, 2011, as a result of a natural disaster or related condition;

(3) Have continuously owned the stand from the time of the disaster until the time that the TAP application is submitted.

(b) A new owner of an orchard or nursery who does not meet the requirements of paragraph (a) of this section may receive TAP payments approved for the previous owner of the orchard or nursery and not paid to the previous owner, if the previous owner of the orchard or nursery agrees to the succession in writing and if the new owner:

(1) Acquires ownership of trees, bushes, or vines for which benefits have been approved;

(2) Agrees to complete all approved practices that the original owner has not completed; and

(3) Otherwise meets and assumes full responsibility for all provisions of this

part, including refund of payments made to the previous owner, if applicable.

(c) A producer seeking payment must not be ineligible under the restrictions applicable to citizenship and foreign corporations contained in § 1416.3(b) and must meet all other requirements of subpart A of this part.

(d) Federal, State, and local governments and agencies and political subdivisions thereof are not eligible for payment under this subpart.

§ 1416.405 Application.

(a) To apply for TAP, a producer that suffered eligible tree, bush, or vine losses that occurred:

(1) On or after October 1, 2011, through December 31, 2014, must provide an application for payment and supporting documentation to FSA by the later of January 31, 2015, or 90 calendar days after the disaster event or date when the loss is apparent to the producer.

(2) During the 2015 calendar year or later, must provide an application for payment and supporting documentation to FSA within 90 calendar days of the disaster event or date when the loss of trees, bushes, or vines is apparent to the producer.

(b) The producer must submit the application for payment within the time specified in paragraph (a) of this section to the FSA administrative county office that maintains the producer's farm records for the agricultural operation.

(c) A complete application includes all of the following:

(1) A completed application form provided by FSA;

(2) An acreage report for the farming operation as specified in part 718, subpart B, of this title;

(3) Subject to verification and a loss amount determined appropriate by the county committee, a written estimate of the number of trees, bushes, or vines lost or damaged that is certified by the producer or a qualified expert, including the number of acres on which the loss occurred;

(4) Sufficient evidence of the loss to allow the county committee to calculate whether an eligible loss occurred; and

(5) A farm operating plan, if a current farm operating plan is not already on file in the FSA county office.

(d) Before requests for payment will be approved, the county committee:

(1) Must make an eligibility determination based on a complete application for assistance;

(2) Must verify actual qualifying losses and the number of acres involved by on-site visual inspection of the land and the trees, bushes, or vines;

(3) May request additional information and may consider all relevant information in making its determination; and

(4) Must verify actual costs to complete the practices, as documented by the producer.

§ 1416.406 Payment calculations.

(a) Payment to an eligible orchardist or nursery tree grower for the cost of replanting or rehabilitating trees, bushes, or vines damaged or lost due to a natural disaster, in excess of 15 percent damage or mortality (adjusted for normal damage or mortality), will be calculated as follows:

(1) For the cost of planting seedlings or cuttings, to replace lost trees, bushes, or vines, the lesser of:

(i) 65 percent of the actual cost of the practice, or

(ii) The amount calculated using rates established by the Deputy Administrator for the practice.

(2) For the cost of pruning, removal, and other costs incurred for salvaging damaged trees, bushes, or vines, or in the case of mortality, to prepare the land to replant trees, bushes, or vines, the lesser of:

(i) 50 percent of the actual cost of the practice, or

(ii) The amount calculated using rates established by the Deputy Administrator for the practice.

(b) An orchardist or nursery tree grower that did not plant the trees, bushes, or vines, but has a production history for commercial purposes on planted or existing trees and lost the trees, bushes, or vines as a result of a natural disaster, in excess of 15 percent damage or mortality (adjusted for normal damage or mortality), will be eligible for the salvage, pruning, and land preparation payment calculation as specified in paragraph (a)(2) of this section. To be eligible for the replanting payment calculation as specified in paragraph (a)(1) of this section, the orchardist or nursery grower who did not plant the stock must be a new owner who meets all of the requirements of § 1416.404(b) or be considered the owner of the trees under provisions appearing elsewhere in this subpart.

(c) Eligible costs for payment calculation include costs for:

(1) Seedlings or cuttings, for tree, bush, or vine replanting;

(2) Site preparation and debris handling within normal horticultural practices for the type of stand being re-established, and necessary to ensure successful plant survival;

(3) Pruning, removal, and other costs incurred to salvage damaged trees, bushes, or vines, or, in the case of tree

mortality, to prepare the land to replant trees, bushes, or vines;

(4) Chemicals and nutrients necessary for successful establishment;

(5) Labor to plant seedlings or cuttings as determined reasonable by the county committee; and

(6) Labor used to transplant existing seedlings established through natural regeneration into a productive tree stand.

(d) The following costs are not eligible:

(1) Costs for fencing, irrigation, irrigation equipment, protection of seedlings from wildlife, general improvements, re-establishing structures, and windscreens.

(2) Any other costs not listed in paragraphs (c)(1) through (6) of this section, unless specifically determined eligible by the Deputy Administrator.

(e) Producers must provide the county committee documentation of actual costs to complete the practices, such as receipts for labor costs, equipment rental, and purchases of seedlings or cuttings.

(f) When lost stands are replanted, the types planted may be different from those originally planted. The alternative types will be eligible for payment if the new types have the same general end use, as determined and approved by the county committee. Payments for

alternative types will be based on the lesser of rates established to plant the types actually lost or the cost to establish the alternative used. If the type of plantings, seedlings, or cuttings differs significantly from the types lost, the costs may not be approved for payment.

(g) When lost stands are replanted, the types planted may be planted on the same farm in a different location than the lost stand. To be eligible for payment, site preparation costs for the new location must not exceed the cost to re-establish the original stand in the original location.

(h) Eligible orchardists or nursery tree growers may elect not to replant the entire eligible stand. If so, the county committee will calculate payment based on the number of qualifying trees, bushes, or vines actually replanted.

(i) If a practice, such as site preparation, is needed to both replant and rehabilitate trees, bushes, or vines, the producer must document the expenses attributable to replanting versus rehabilitation. The county committee will determine whether the documentation of expenses detailing the amounts attributable to replanting versus rehabilitation is acceptable. In the event that the county committee determines the documentation does not include acceptable detail of cost

allocation, the county committee will pro-rate payment based on physical inspection of the loss, damage, replanting, and rehabilitation.

(j) The cumulative total quantity of acres planted to trees, bushes, or vines for which a producer may receive payment under this part for losses that occurred on or after October 1, 2011, can not exceed 500 acres per program year.

§ 1416.407 Obligations of a participant.

(a) Eligible orchardists and nursery tree growers must execute all required documents and complete the TAP-funded practice within 12 months of application approval.

(b) Eligible orchardist or nursery tree growers must allow representatives of FSA to visit the site for the purposes of certifying compliance with TAP requirements.

(c) Producers who do not meet all applicable requirements and obligations will not be eligible for payment.

Signed on April 7, 2014.

Juan M. Garcia,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

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Reader Aids

Federal Register

Vol. 79, No. 71

Monday, April 14, 2014

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
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FEDERAL REGISTER PAGES AND DATE, APRIL

18153-18440.....	1
18441-18610.....	2
18611-18764.....	3
18765-18984.....	4
18985-19286.....	7
19287-19460.....	8
19461-19804.....	9
19805-20090.....	10
20091-20752.....	11
20753-21118.....	14

CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR	1774.....	18482
	1775.....	18482
Proclamations:	1779.....	18482
9092.....	18763	1780.....
9093.....	18975	1781.....
9094.....	18977	1782.....
9095.....	18979	1924.....
9096.....	18981	1940.....
9097.....	18983	1942.....
9098.....	18985	1944.....
9099.....	19799	1948.....
9100.....	19801	1951.....
9101.....	20089	1955.....
9102.....	20745	1962.....
Executive Orders:	1970.....	18482
11246 (Amended by	1980.....	18482
13665).....	20747	3550.....
13664.....	19283	3560.....
13665.....	20747	3565.....
Administrative Orders:	3570.....	18482
Memorandums:	3575.....	18482
Memorandum of April	4274.....	18482
8, 2014.....	20749	4279.....
Notices:	4280.....	18482
Notice of April 7,	4284.....	18482
2014.....	19803	4290.....
5 CFR		
Proposed Rules:		
1201.....	18658	
6 CFR		
5.....	18441	
7 CFR		
33.....	18765	
319.....	19805	
322.....	19805	
360.....	19805	
905.....	19461	
1214.....	18987	
1400.....	21086	
1416.....	21086	
1463.....	19462	
Proposed Rules:		
28.....	18211	
319.....	19838, 19840	
457.....	20110	
920.....	19501	
987.....	19028	
1703.....	18482	
1709.....	18482	
1710.....	18482	
1717.....	18482	
1720.....	18482	
1721.....	18482	
1724.....	18482	
1726.....	18482	
1737.....	18482	
1738.....	18482	
1739.....	18482	
1740.....	18482	
1753.....	18482	
10 CFR		
72.....	20753	
430.....	20091	
Proposed Rules:		
50.....	19501	
170.....	21036	
171.....	21036	
429.....	19844	
430.....	18661	
431.....	19293, 19844, 20114	
12 CFR		
303.....	20754	
308.....	20754	
324.....	20754	
327.....	20754	
333.....	20754	
337.....	20754	
347.....	20754	
349.....	20754	
360.....	20754	
362.....	20754	
363.....	20754	
364.....	20754	
365.....	20762	
380.....	20754	
390.....	20754	
391.....	20754	
Proposed Rules:		
34.....	19521	
208.....	19521	
225.....	19521	
323.....	19521	
390.....	19521	
1026.....	19521	
1222.....	19521	

13 CFR	516.....18156	146.....20844	13.....20844
Proposed Rules:	520.....18156	147.....19569, 20844	14.....20844
102.....19544	522.....18156	165.....18245, 19031, 19034, 19302, 19572, 20851	15.....20844
14 CFR	526.....18156		69.....19420
25.....20768	556.....18990	34 CFR	
36.....20769	558.....18156, 18990, 19814, 19816	Proposed Rules:	73.....19014
39.....18611, 18615, 18617, 18619, 18622, 18626, 18629, 18987, 19812	890.....20779	Ch. III.....18490	90.....20105
71.....18153, 18154, 18155, 18442, 19287, 20769	Proposed Rules:	Ch. VI.....20139	Proposed Rules:
91.....19288	1.....18866, 18867		1.....18249, 20854
1201.....18443	172.....19301	39 CFR	36.....18498
Proposed Rules:	22 CFR	Proposed Rules:	76.....19849
25.....20818	41.....19288	3050.....18661	80.....18249
39.....18846, 18848, 19294, 19296, 19299, 19546, 19548, 19844, 19846, 20138, 20819, 20824, 20827, 20829, 20832, 20834, 20837, 20839	303.....19816	40 CFR	95.....18249
71.....18482, 19030	26 CFR	9.....20800	48 CFR
121.....18212	1.....18159, 18161	51.....18452	246.....18654
15 CFR	602.....18161	52.....18183, 18453, 18644, 18802, 18997, 18999, 19001, 19009, 19012, 19820, 20098, 20099	552.....20106
Proposed Rules:	29 CFR	60.....18952	Proposed Rules:
730.....19552	1910.....20316	180.....18456, 18461, 18467, 18805, 18810, 18815, 18818, 19485, 20100	1.....18503
742.....19552	1926.....20316	282.....19830	3.....18503
748.....19552	1985.....18630	721.....20800	12.....18503
762.....19552	2700.....20098	761.....18471	52.....18503
772.....19552	Proposed Rules:	799.....18822	915.....18416
922.....20982	4001.....18483	Proposed Rules:	934.....18416
16 CFR	4022.....18483	52.....18248, 18868, 19036, 20139	942.....18416
303.....18766	4044.....18483	81.....18248, 20139	944.....18416
305.....19464	30 CFR	131.....18494	945.....18416
Proposed Rules:	723.....18444	241.....21006	952.....18416
306.....18850	724.....18444	300.....19037	1516.....19039
17 CFR	845.....18444	761.....18497	1552.....19039
Proposed Rules:	846.....18444	770.....19305	49 CFR
200.....18483	31 CFR	41 CFR	390.....19835
229.....18483	560.....18990	102-42.....18477	571.....19178
230.....18483, 19564	32 CFR	Proposed Rules:	Proposed Rules:
232.....18483	117.....19467	102-36.....19575	Ch. X.....19042
239.....18483	156.....18161	42 CFR	50 CFR
240.....18483	33 CFR	85a.....19835	17.....18190, 19712, 19760, 19974, 20073, 20107
243.....18483	100.....18167, 18169, 18448, 18995, 19478, 20783	Proposed Rules:	25.....18478
249.....18483	117.....18181, 18996, 20784, 20785, 20786	85a.....19848	32.....18478
270.....19564	165.....18169, 19289, 19480, 19483, 20786, 20789, 20792, 20794, 20796	44 CFR	92.....19454
18 CFR	177.....20797	64.....18825	223.....20802
35.....18775	334.....18450	45 CFR	224.....20802
Proposed Rules:	Proposed Rules:	18.....20801	300.....18827, 19487
284.....18223	100.....20841	Proposed Rules:	622.....19490, 19836
21 CFR	117.....18243	1351.....21064	635.....20108
1.....18799	140.....20844	46 CFR	648.....18478, 18834, 18844, 19497
14.....20094	141.....20844	10.....20844	660.....19498
73.....20095	142.....20844	11.....20844	679.....18654, 18655, 18845, 19500
179.....20771	143.....20844	12.....20844	697.....19015
510.....18156, 19814, 19816	144.....20844		Proposed Rules:

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.

Last List April 9, 2014

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